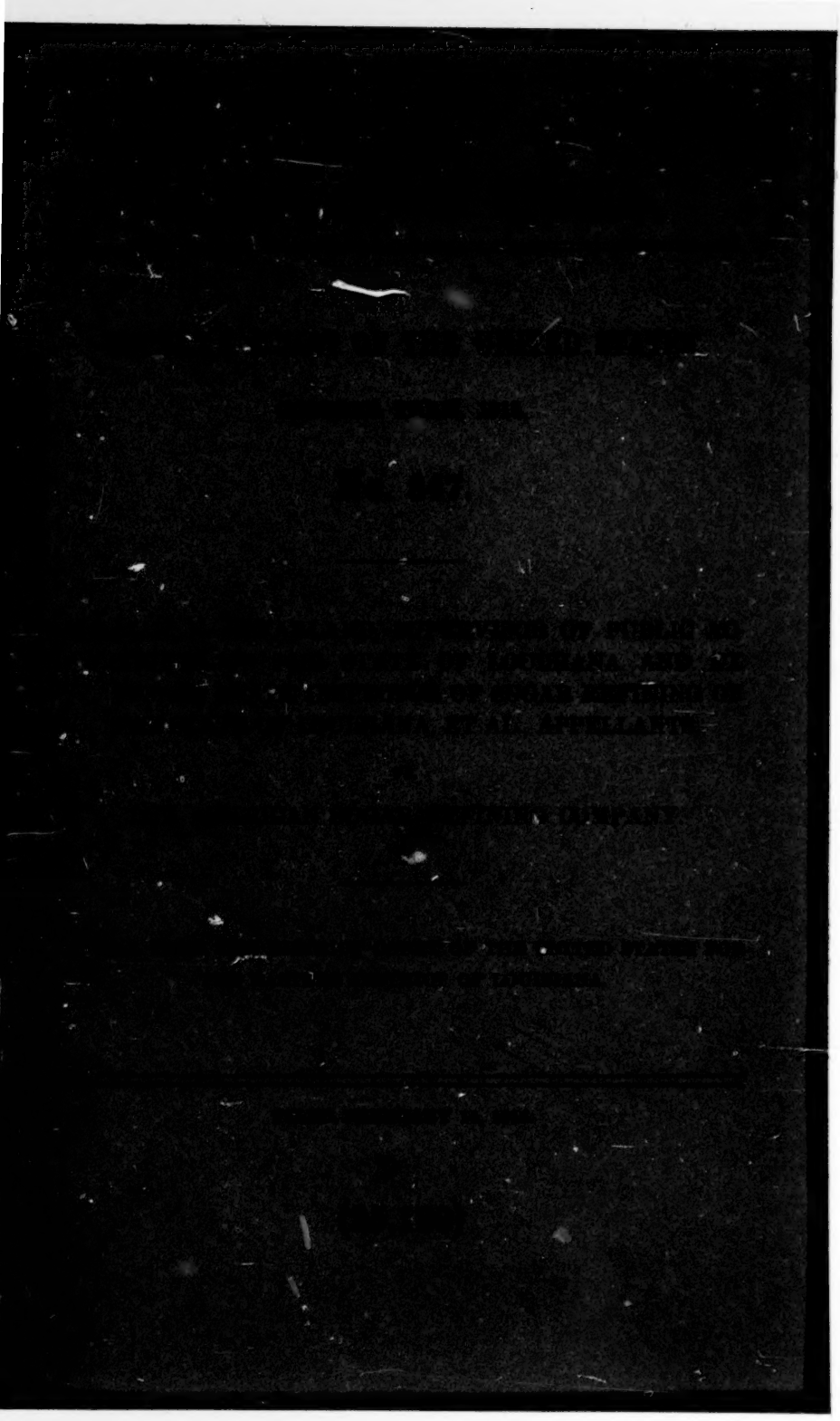

(25,130)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 847.

WILLIAM N. McFARLAND, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA AND *EX OFFICIO* STATE INSPECTOR OF SUGAR REFINING OF THE STATE OF LOUISIANA, ET AL., APPELLANTS,

vs.

THE AMERICAN SUGAR REFINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 15, 1916.

a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. —.

WILLIAM N. MCFARLAND et als., Appellants,
vs.
THE AMERICAN SUGAR REFINING COMPANY, Appellee.

Ruffin G. Pleasant, Esq., Attorney General of Louisiana, and Donelson Caffrey, Esq., Solicitors for William N. McFarland, et als., Appellants.

Joseph W. Carroll, George Denegre, Hugh C. Cage and James M. Beck, Esqrs., Solicitors for The American Sugar Refining Company, Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, returnable within thirty (30) days from the 21st day of January, A. D. 1916, at Washington, D. C.

TRANSCRIPT OF APPEAL

1 *Bill of Complaint.*

Filed September 21st, 1915.

In the District Court of the United States for the Eastern District of Louisiana. In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
versus
WILLIAM N. MCFARLAND et als.

To the Honorable the District Court of the United States for the Eastern District of Louisiana:

The American Sugar Refining Company, a corporation, brings this its bill of complaint against William N. McFarland, Luther E. Hall, and Ruffin G. Pleasant, in their respective capacities hereinafter set forth, and thereupon your orator complains and says:

2 I.

Complainant, the American Sugar Refining Company, is a corporation, incorporated and existing under the laws of the State of New Jersey, and is a citien of said State of New eJrsey; said William

N. McFarland, made defendant herein, is the Supervisor of Public Accounts of the State of Louisiana, and is designated in the hereinafter recited Act No. 10 of the Extra Session of 1915 of the General Assembly of Louisiana, as Inspector of Sugar Refining of Louisiana, by virtue of his said office of Supervisor of Public Accounts, and he is a citizen and resident of the State of Louisiana, whose official residence and place of office is in the City of Baton Rouge, in said State; said Luther E. Hall, made defendant herein, is the Governor of the State of Louisiana, and is a citizen and resident of the State of Louisiana, whose official residence and place of office is in the City of Baton Rouge, in said State; and said Ruffin G. Pleasant, made defendant herein, is the Attorney General of the State of Louisiana, and is a citizen and resident of the State of Louisiana, whose official residence and place of office is in the City of New Orleans, in said State.

II.

The jurisdiction of this Honorable Court herein depends (1) upon the diversity of citizenship of the parties complainant and defendant herein, as just hereinabove set forth, and (2) upon the assertion and claim of complainant that the said Act No. 10 of the Extraordinary Session of the General Assembly of the State of Louisiana of 1915, works an illegal interference with commerce between the States and with foreign countries, deprives complainant of its liberty and property without due process of law, denies
3 to complainant the equal protection of the laws, and violates the Constitution of the United States, and particularly Article I, Section 8, Paragraph 3, thereof, and the Fourteenth Amendment thereto, in the several particulars hereinafter set forth.

This is a suit in equity, arising as aforesaid under the Constitution and laws of the United States, in which the matter in controversy exceeds, exclusive of interest and costs, the sum or value of five thousand dollars.

Complainant seeks herein to enjoin the defendants, and each of them, from enforcing, or attempting to enforce, against complainant the provisions and penalties of said Act No. 10, and the regulations authorized thereby to be made and promulgated.

III.

Complainant is, and has been continuously since the year 1891, a corporation of the State of New Jersey, and has been continuously since some time in said year 1891, and is now, doing business in the State of Louisiana, pursuant to the laws of said State. Complainant is, and has been continuously during said time, engaged in the business of refining sugar in said State of Louisiana; the refining of sugar is, and has been, its principal business; and its said business is known and designated as that of sugar refining.

Upon its organization in 1891, complainant acquired two sugar refineries at New Orleans which had formerly belonged to the Louisiana Sugar Refining Company and the Planters' Sugar Refining Company, respectively. At that time said two refineries, which then

had an aggregate daily melting capacity of about 1,250,000 pounds, had been consolidated and were being operated as one, under
4 the name of the Louisiana Refinery. Thereafter, from time to time, at a large outlay, the capacity of said consolidated refinery was gradually increased by complainant until in 1909 it had reached 2,500,000 pounds daily capacity, or about double the original capacity. About that time, having been influenced by the economic and geographical advantages of New Orleans as a sugar refining point, complainant built and equipped, at a cost of about six million dollars, a first-class modern refinery at Chalmette, in St. Bernard Parish, Louisiana, near New Orleans, which was first operated in 1909 with a daily melting capacity of about 3,000,000 pounds, such capacity having since been increased to about 3,500,000 pounds, or nearly three times the capacity of said two old refineries in 1891.

Shortly after the opening of the Chalmette refinery in 1909, the Louisiana refinery in New Orleans was closed down and has not since been operated, for the reason that it was not possible then, and has not since been possible, for complainant to distribute from New Orleans more refined sugar than could and can be readily manufactured at the Chalmette refinery, principally because of freight rates, of the limited consuming population accessible from New Orleans as a shipping point, and of the competition of the beet sugar producers in the markets of the Central West. Moreover, the Louisiana refinery is comparatively antiquated and could not now be economically operated, though it has never been dismantled and could be, at considerable expense and after some delay, operated to serve in some sort as a substitute refinery for the Chalmette refinery in case of the latter's fortuitous destruction or impairment.

5 Complainant purchases annually, on an average, less than one-half of the Louisiana sugar crop, the average for twenty-three crop seasons having been 47.43 per cent. Of the portion so purchased a large fraction, which in recent seasons has averaged over one-third, has been shipped in the raw state, as bought, to the Company's Northern refineries; so that latterly not much over thirty per cent. of the Louisiana crop has been annually melted at the Chalmette refinery. Annexed hereto, marked "Exhibit A," is a table, which is hereby made a part of this bill as if here and now set forth fully and at length, which table shows in tons of 2240 pounds each, by crop seasons, the total amounts of the Louisiana crops of cane sugar, the amounts and percentages thereof purchased each season by complainant and the amount shipped north by it, together with the dates and statistical authorities.

Of the total annual meltings of complainant in its refineries at New Orleans and Chalmette only a portion, and in later years only a comparatively small portion, has consisted of sugar produced in Louisiana; the remainder of the sugar so melted and refined having been imported from Cuba and other foreign countries and the insular possessions of the United States—excepting occasional lots of sugar grown in Texas.

Annexed hereto is a table marked "Exhibit B," which is hereby

made a part of this bill as if here and now set forth fully and at length, and which shows by calendar years, in tons of 2240 pounds each, the total meltings, and the amounts and percentages of Louisiana sugar melted, at complainant's New Orleans refinery from 1892 until 1909, and later at the Chalmette refinery. From said "Exhibit B" it appears that, while in the earlier years, and
6 particularly from 1894 to 1899, inclusive, the Louisiana sugars melted at complainant's New Orleans refinery formed a comparatively large percentage of the whole amount there melted, yet, beginning with 1900, such percentage has greatly declined, until in 1912 only twenty-five per cent, and in 1913 only eighteen per cent. of the entire meltings in Louisiana consisted of Louisiana sugar.

IV.

The Extraordinary Session of the General Assembly of the State of Louisiana of 1915 enacted a purported law, approved June 10, 1915, designated as Act No. 10 of said Extra Session, of which the title reads as follows, viz.:

"An Act regulating the business of refining sugar, in so far as it is necessary to protect same and the public from monopoly therein, and establishing to that end the rules and conditions on which it may be carried on in the State, and prohibiting certain irregularities and practices in said business; defining the business of refining sugar; imposing as inspection fee upon refined sugar; creating the office of State Inspector of Sugar Refining, and such assistants as may be necessary, and providing that the Supervisor of Public Accounts of Louisiana shall be exofficio State Inspector of Sugar Refining and for his salary, duties and those of his assistants; providing for the sale or other disposition of refineries kept idle for illegal and monopolistic purposes; permitting the appointment of receivers in certain cases of violation of this law; fixing penalties for the violation of this law, and of the regulations to be promulgated by the State Inspector of Sugar Refining; providing rules of procedure and evidence for the enforcement hereof, and providing for the en-
7 forcement of this act by suit to be instituted on behalf of the State by the Attorney General or by the District Attorney of each parish, under the direction of the Attorney General or of the Governor."

Complainant annexes hereto, marked "Exhibit C," a copy of said Act No. 10, above referred to, for purposes of convenience and reference in connection with this bill of complaint, and prays that the same be taken as if fully and completely herein set forth.

V.

Said Act No. 10 purports to enact that the business of sugar refining in Louisiana is "recognized and declared to be impressed with a public interest," and that sugar refineries in Louisiana are public utilities. Said act, particularly in the items hereinafter set forth, impairs, interferes with and in effect destroys the private ownership and control of the business of sugar refining in the State of Louisi-

ana, and particularly complainant's ownership and control of its said sugar refineries in said State, without lawful right or warrant, and in violation of the Constitutions of the United States and of the State of Louisiana.

VI.

The business of refining sugar, as customarily carried on by the sugar refineries in the State of Louisiana, and as now and heretofore carried on by complainant, involves (1) the purchase of raw and other unrefined sugars (hereinafter collectively called raw sugars), partly by special contracts and partly in the customary markets of Louisiana, of other States, of our insular possessions and of foreign countries, and the purchase of the materials and supplies necessary for the processes of producing the several forms and grades of refined sugars; (2) the conversion of the raw sugar, by manufacturing processes, into said refined products; and (3) the distribution and sale of said refined products.

8

The said business of complainant requires a large amount of invested and working capital; the employment of a large number of skilled and unskilled employees; the exercise, for successful operation, of a high order of technical skill and mercantile ability; sound business judgment as to amounts of supplies, prices at which purchases and sales should be made, methods and places of distribution, and solvency of buyers—in fact, said business involves in great measure all of the complex elements of merchandising and manufacturing.

VII.

The business of complainant in the State of Louisiana has always been and is strictly and essentially private in nature, and one which is not affected with a public interest and is not a public utility. Complainant buys, and has always bought, outright, the raw sugar refined at its refineries, and has refined the same solely for its own account. It has never melted or refined sugar for another on toll, or otherwise, nor offered to do so; nor has it ever rendered, nor offered to render, nor held itself out as willing to render, to the public, or any part thereof, any service whatever for hire. It has never received into its refineries or warehouses any sugar not solely its own, nor held itself out to do so. All Louisiana sugars bought have been bought by it outright, in the open market at New Orleans, or by special contracts. Such sugars, so bought are, before acceptance, weighed by a public weigher, designated by the seller. The imported raw sugars melted at complainant's refinery are likewise bought, usually at New York, and are usually tested and paid for in New York.

9

The said Act No. 10, in assuming to impress the essentially private business of complainant with a public interest and to create of it a public utility, and to regulate, tax and take the same and to impair complainant's control and domination thereover, violates the Constitution of Louisiana, Article 2, and the Constitution of the United States, particularly the Fourteenth Amendment thereto,

which provides that no State shall make or enforce any law which shall deprive any person of liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

VIII.

Said Act No. 10 further denies to complainant the equal protection of the laws guaranteed by the Constitution of the United States, particularly by the said Fourteenth Amendment thereto, in this, that while the object of said act is to regulate the business of sugar refining, it nevertheless specially exempts from its operation all sugar refiners who may buy and refine less raw or other sugar than the aggregate of the sugar produced from cane grown or purchased by such exempted sugar refiners, as set forth and expressed in Section 15 of the said act.

The said exemption unlawfully discriminates against complainant in that it establishes an unreasonable and unjustifiable classification of sugar refiners; and the said Act No. 10 therein violates the said Constitution of the United States, particularly the said Four-
10 teenth Amendment thereto, and is therefore null, void and of no effect.

IX.

The declared object of said Act No. 10 is to regulate "the business of refining sugar, in so far as it is necessary to protect same and the public from monopoly therein." The said Act 10 thus by its terms applies solely to the business of sugar refining (in which complainantt is engaged), and does not embrace any other manufacturing or commercial business, and, therefore, in each particular thereof, denies to complainant the equal protection of the laws, violates the Constitution of the United States, and particularly the said Fourteenth Amendment thereto, and is null and void.

X.

Said Act No. 10 makes it unlawful for sugar refiners subjected to the provisions thereof, "to buy sugar on an ex parte test of its quality, or upon any other weights than those of the actual net contents of any bag or package."

The bulk of the sugar purchased by complainant for its said business of refining sugar in Louisiana consists of sugar grown and produced in the insular possessions of the United States and in foreign countries and imported into Louisiana therefrom.

The said act attempts an unlawful interference with foreign and interstate commerce; arbitrarily deprives complainant and all other sugar refiners subjected to its terms of the liberty of contract and of their property; and denies to complainant and such other sugar refiners the equal protection of the laws, in that all other
11 persons, including the favored class of exempted sugar refiners, are not within the said prohibition.

The said Act No. 10, therefore, further violates the Constitution of the United States, and particularly Paragraph 3 of Section 8 of

Article I thereof, which provides that the Congress of the United States shall have power "to regulate commerce with foreign nations and among the several States," and also the Fourteenth Amendment to said Constitution, which provides that no State shall make or enforce any law which shall deprive any person of liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

XI.

Complainant is, has been and purposes continuing to be, engaged in the business of refining sugar in the State of Louisiana and in other States of the Union; and in connection therewith it has customarily bought, and has the lawful right to continue to buy, without restraint, raw sugars in Louisiana, in other States of the Union, in our insular possessions, and in foreign countries.

Much the larger part of the raw sugar refined by complainant and generally in the United States has always been, and still is imported either from foreign countries or from the insular possessions of the United States. The principal port for the receipt of such imported raw sugar and the principal market for its purchase is and always has been New York City, at or near which there have for many years been, and still are, situated numerous large sugar refineries, of which there are now not less than seven—all actually in operation.

12 The bulk of the raw sugars produced in the State of Louisiana have customarily been brought on the market during the months of November and December, during which months they have usually been pressed for sale in amounts far in excess of the combined requirements during the same months of all the refiners in Louisiana, whose output and sales are necessarily limited by the territory which they can profitably reach. It has, therefore, been necessary for the purchasers of raw sugars thus forced to sale in excess of the immediate needs of the Louisiana refiners, either to ship to Northern ports all or a part of such excess or surplus, or to store the same until such time as it could be used, with the consequence of loss from deterioration, loss in weight, interest on capital invested, expense of storage, cost of insurance, etc., and at the risk of a decline in market value before using.

It is a fundamental economic law that, where more of a product is offered for sale than can be used in the home market and the surplus must be sold in a remote market, the price of the whole must be the price which can be obtained for the surplus. Obviously, the price obtainable for such surplus in the original market cannot be higher than such a price as, with the addition of the cost of transportation to the ultimate market, will approximately equal the market price in the ultimate market. In an open market there cannot be two prices for the same commodity at the same time. Hence, it has resulted that, during the period in each year when the bulk of the Louisiana raw sugar has been offered for sale, its market price in New Orleans has ruled below the price prevailing at the same time for raw sugar at New York; said price being affected by the cost of

transportation to New York and by the various other complex
13 elements which establish price, such as the amount of sugar pressing for sale, the varying desires of producers to realize upon their products, etc.

Complainant, in buying Louisiana sugar in the open market, has always paid the market price for it. In the nature of things it could not pay more and compete successfully with other refiners. It has not, however, resulted therefrom that complainant, in thus buying Louisiana sugar at less than the New York price on the day of purchase, has derived a benefit equal to the difference between the two prices, or has derived any benefit whatever. And this for the following reasons, among others:

(1) To the extent that the Louisiana sugar thus purchased by complainant has been shipped by it to a Northern port, the cost of transportation has substantially equalled the difference in the prices at the two ports.

(2) A large part of the Louisiana sugar purchased by complainant and not so shipped has had to be carried in storage for several months at a time of the year when the price of raw sugar usually declines. Owing to the close connection between the prices of raw and refined sugar in the United States under the action of competition, a decline in the price of raw sugar means a corresponding decline in the price of refined sugar; so that a refiner, who has carried raw sugar on a declining market inevitably loses substantially the amount of such decline when he comes to make and market the refined article.

The following table shows the average prices of raw sugar at New York during the months of November, December, January and February for the seasons 1910-11 to 1913-14, inclusive:

14 *Monthly Average Prices in New York of Raw Sugar, 96 Test.*

	November.	December.	January.	February.	
1910-11....	3.8812c.	3.982c.	3.584c.	3.577c.	p. pound.
1911-12....	5.127c.	4.824c.	4.424c.	4.656c.	
1912-13....	4.050c.	3.941c.	3.508c.	3.483c.	
1913-14....	3.625c.	3.393c.	3.339c.	3.441c.	

From this table it appears that in the season of 1910-11 the price of raw sugar at New York declined in one month, from December to January, about forty cents per hundred pounds, and in 1911-12, during the same interval, about the same amount. In the season 1912-13, the decline from December to January was about forty-three cents per hundred pounds. These declines measured the losses of the Louisiana refiner who had purchased Louisiana sugar in November or December in excess of his immediate needs and was obliged to carry it into the following months.

These declines have, since the great increase in the production of Cuban sugar, say since 1900, occurred almost uniformly, and are due, according to current opinion and as complainant is advised and believes, to the marketing of the Cuban sugar crop, beginning about

January, far in excess of the immediate needs of refiners and consumers.

(3) The cost of carrying raw sugar in storage, including loss in weight, inversion, interest, insurance and other incidentals and storage proper, has been between five and six cents per hundred pounds per month. (Since complainant has built its Chalmette refinery, the storage element of this loss has been materially reduced.)

15 (4) Formerly, and down to the time when the Chalmette refinery was opened, a large part of the refined sugar manufactured by complainant in Louisiana was sold in the Central West, particularly in the large cities bordering on the Missouri River, which region was and still is one of the great markets for refined sugar in the United States. Complainant also sold large quantities of refined sugar in the States further north, principally Minnesota, Iowa, the Dakotas, etc. One of the chief incentives for building the costly Chalmette refinery was the desire to continue and extend the sale of refined sugar in the said territory which, by reason of lower freight rates, was more accessible to New Orleans than to the Eastern seaboard. Owing, however, to the great and rapid increase, in States west of the Missouri River, in the production of beet sugar, which now forms about one-sixth of all the sugar of every kind consumed in the United States, and which is always sold at prices below those of cane sugar, complainant has to a great extent been driven out of the Missouri River territory and the more northerly States mentioned. Having thus lost its markets in the Central West, as aforesaid, and it being advantageous to operate said Chalmette refinery up to a certain capacity, in order to keep down the manufacturing expense, complainant has been obliged to send a portion of the sugar refined into States further east, thereby coming into competition with sugar shipped by Eastern refineries. Under these circumstances it has been necessary for complainant, in order to equalize freights, to absorb a portion of the freight on all the sugars so sold in such remote markets.

From these various causes it has frequently resulted that complainant has derived little or no advantage from the purchase of Louisiana sugar, even although bought at market prices less

16 than the New York prices for the same sugar on the day of purchase.

The largest part of the business carried on by complainant in connection with its Chalmette refinery, as well as elsewhere, is interstate and foreign commerce, both as regards raw sugars bought and refined sugars sold; its commerce within the State of Louisiana being confined largely to transactions involving the purchase of Louisiana raw sugars in said State and the sale of a portion of its refined product in said State.

Complainant's interstate and foreign commerce, in connection with its said Chalmette refinery is of far greater amount than its commerce within the State of Louisiana. Not only is a substantial part of its purchases of Louisiana sugar shipped to other States, but the greatest part of the raw sugars used are imported from our insular possessions and from foreign countries, and the sugar when

refined, to the extent of about ninety per cent. of the total production, is sold and shipped to other States.

But by the terms of said Act No. 10 any person, engaged in the business of sugar refining and subject to its terms, who systematically pays in Louisiana a less price for sugar than he pays in other States, is subjected to an injurious, oppressive, unreasonable and discriminatory presumption of guilt of an offense against the laws.

Complainant has the lawful right to buy sugar in Louisiana, as well as elsewhere, at the market prices which may prevail, and at such prices as may be offered and as complainant may be willing to pay; and to thus create against complainant a harsh, oppressive and unjust presumption, is to unlawfully restrict complainant's liberty and to take its property, and to deny to it the equal protection of the laws.

17 Said act is also an unlawful interference with foreign and interstate commerce. To so discredit, penalize and restrict purchases of sugar by complainant and others works an arbitrary and unreasonable interference with the commerce among the several States and with foreign countries, as would patently appear if each of the States should enact similar laws.

The said Act No. 10, therefore, violates the Constitution of the United States, and particularly Paragraph 3 of Section 8 of Article I thereof, which provides that the Congress of the United States shall have power "to regulate commerce with foreign nations and among the several States," and also the Fourteenth Amendment to said Constitution, which provides that no State shall make or enforce any law which shall deprive any person of liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

XII.

Under the provisions of said act, the penalty imposed upon individuals, firms and unincorporated associations, for the violation of the provisions of Section 7 thereof, is a fine of five hundred dollars for each day; the penalty imposed upon domestic corporations for the same offense involves, in addition to the said fine, a liquidation; while the punishment provided for the same offense for corporations of other States doing business in Louisiana, of which complainant is one, involves in addition to the said fine of five hundred dollars, their ouster from the State and a forced sale of all their property.

The said law, in thus making an arbitrary distinction between natural persons and partnerships on the one hand and
18 corporations on the other hand, and again as between domestic and foreign corporations, denies to complainant the equal protection of the laws, is violative of the said Fourteenth Amendment to the Constitution of the United States, and is null and void.

XIII.

Said Act No. 10 is violative of Articles 16, 17 and 84 of the Constitution of the State of Louisiana, in that the declarations of said

act to the effect that the business of sugar refining in the State of Louisiana is recognized and declared to be impressed with a public interest by reason of the nature and by reason of the monopolization thereof, and that sugar refineries in Louisiana, in the business of buying raw sugar and manufacturing refined sugar and in the business of manufacturing refined sugar, whether the raw sugar is bought or otherwise handled, are public utilities, are in effect findings of fact and law and are an attempted exercise of judicial power, which by the said articles of the Constitution of the State of Louisiana are confided exclusively to the judicial department of the State and denied to the legislative department thereof, and the said act is, therefore, unconstitutional, null, void and of no effect.

XIV.

Article 190 of the Constitution of the State of Louisiana prohibits monopolies and combinations and conspiracies in restraint of trade, and by its terms is self-operative. Said Act No. 10 seeks to regulate a business which it declares to be monopolized and is, therefore, repugnant to and violative of said Article 190 of the Constitution of Louisiana, and is null, void and of no effect.

19

XV.

Said Act No. 10 creates the office of "State Inspector of Sugar Refining" and fixes the salary of such officer at Six Hundred Dollars per annum, and enacts that the "Supervisor of Public Accounts for the State of Louisiana" shall be ex officio "State Inspector of Sugar Refining."

The said law is therein violative of Article 170 of the Constitution of the State of Louisiana, which provides that

"No person shall hold or exercise, at the same time, more than one office of trust or profit, except that of Justice of the Peace or Notary Public,"

and is, therefore, null, void and of no effect.

Under the Constitution, the laws and the jurisprudence of the State of Louisiana, where an office-holder accepts another office, such acceptance ipso facto vacates the former office; and since the acceptance of the office of "Inspector of Sugar Refining" by the "Supervisor of Public Accounts for the State of Louisiana" would ipso facto vacate his office of "Supervisor of Public Accounts for the State of Louisiana," and since the act provides that only the "Supervisor of Public Accounts for the State of Louisiana" can be "State Inspector of Sugar Refining," it is impossible for the office of "Inspector of Sugar Refining" to exist constitutionally. The enforcement of the said Act No. 10 depends upon the existence of such an office, and in as much as no one can legally fill the office, the said act is unconstitutional, null and void.

XVI.

The said Act No. 10 provides, unlawfully and without just reason, for the forced inspection of the books, accounts and records
20 of all concerns subject to the act and engaged in the business of refining sugar, at least twice a year, and complainant being within such class, would be thereby subjected to an unreasonable search of its papers and effects, and therein and thereby the said act violates Article 7 of the Constitution of Louisiana; and complainant would be deprived of its liberty and property without due process of law and be denied the equal protection of the laws, in violation of the Constitution of the United States, and particularly the Fourteenth Amendment thereto. Said act is, therefore, null and void.

XVII.

Said Act No. 10 imposes upon refiners subject to its terms, of whom complainant is one, a payment of one-half cent upon every three hundred and fifty pounds of refined sugar manufactured.

If said payment be claimed to be for inspection, the exaction is illegal in that no inspection is provided for in said act, and no inspection is reasonably necessary or appropriate to the purposes of said act.

If said payment be claimed to be a tax upon property, then the same is illegal because not imposed upon all sugar refiners. It is further illegal in that it would to such extent exceed the limit of taxation authorized by the Constitution of Louisiana, Article 232.

The said act, therefore, by its requirement of said payment, violates the Constitution of the United States, and particularly the Fourteenth Amendment thereto, in that it seeks to take complainant's property without due process of law and denies to it the equal protection of the laws; and also violates the Constitution of
21 the State of Louisiana, and particularly Article 232 thereof.

XVIII.

Said act No. 10 is a special law, regulating trade and manufacturing and concerning civil and criminal actions, and, therefore, violates Article 48 of the Constitution of the State of Louisiana, which provides that

"The General Assembly shall not pass any local or special law on the following specified subjects: * * * Regulating labor, trade, manufacturing or agriculture," nor "concerning and civil or criminal actions;"

and said act is, therefore, unconstitutional, null, void and of no effect.

XIX.

Said Act No. 10 provides that, under the conditions therein set forth, the property and assets of sugar refiners subjected to the terms of said act, of whom complainant is one, may be taken possession of by the Court by a preliminary order or writ and appointment of a

receiver, and be operated at the expense of the owner, during the pendency of the suit therein provided to be brought for ouster, in the interest of the public and not at all in the interest, or for the protection, of creditors or owners or stockholders.

Such process constitutes an unwarranted and unreasonable invasion of the right of private ownership, and would be to take complainant's property without due process of law, and deny to it the equal protection of the laws, contrary to the said Fourteenth
22 Amendment to the Constitution of the United States and to Article 2 of the Constitution of Louisiana, and said act is, therefore, null and void.

XX.

Said Act No. 10 further purports to authorize the formulation and promulgation, from time to time, of regulations by the said "Inspector of Sugar Refining." By the terms of said act such regulations, when so formulated and promulgated, are given the force and effect of laws, and the violation thereof is made punishable by severe fines, pains and penalties. Such attempted delegation by the General Assembly of the legislative power violates Article 21 of the Constitution of the State of Louisiana, which provides that

"The legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representaties;"

and also Article 33 of the same, which provides that

"The General Assembly shall never adopt any system or code of laws by general reference to such system or code of laws; but in all cases shall recite at length the several provisions of the laws it may enact;"

and said act is, therefore, null and void.

XXI.

The penalties imposed by said act are harsh, drastic, unreasonable and confiscatory in character and amount. They were intended and designed, and are of such a character and nature as to coerce and constrain complainant, and such other sugar refiners as are sub-
23 jected to the terms thereof, to acquiesce therein. A refusal or failure to observe and comply with the many provisions of the said act and with all of the possible regulations authorized by the said act to be made by said Inspector of Sugar Refining, which may be numerous and which may each be violated daily, would involve a risk of enormous loss, if not of absolute ruin, to complainant. In other words, the aggregate daily violations of the act and of the possible regulations authorized thereby, by one disputing the validity of the law and not complying therewith for the sake of obtaining a judicial determination in regard thereto, must be almost numberless, and by the terms of said act would involve a possible penalty of Twenty-five Hundred Dollars for each separate daily violation of any provision of the act or of the regulations.

The violation by sugar refineries within the terms of the act, Section 7 thereof, which provides that the purchase of sugar in Louisiana at a less price than is paid in another State, carries with it a presumption of guilt for which is imposed not merely a large daily pecuniary fine, but also the penalty of ouster from the State and a forced sale of the property of the offender to strangers, without the possibility of the offender protecting its property or even the value thereof. Such penalties are unreasonable and confiscatory, and are intended and designed to coerce and restrain complainant to acquiesce therein, and to prevent and deter it from seeking and obtaining a judicial determination of the validity thereof on account of the risk of ruin in the event of an adverse decision.

The said Act No. 10 was promulgated on June 14, 1915, and while Article 42 of the Constitution of Louisiana of 1913 provides that an act shall become law ten days after promulgation, yet, as this
24 provision is inconsistent with Article 42 of the Constitution of Louisiana of 1898, which fixed twenty days after promulgation as the time for laws to become effective throughout the State, under the decision of the Supreme Court of Louisiana in the case of State vs. The American Sugar Refining Company, No. 21,051 of the docket, decided May 24, 1915, this provision of the Constitution of 1913 is null and the said act becomes operative as law twenty days after promulgation, or on July 6, 1915.

The said defendants are charged by law with the enforcement of the said act, and, in the event of its violation, have no discretion as to the enforcement thereof according to its terms.

Complainant is advised by counsel, and, therefore, avers and claims, that there is no remedy, except in equity to test, adequately and completely, the legality of the said Act No. 10, and that, in the absence of such remedy in equity, the penalties in the said act would be unreasonable and confiscatory, and the enforcement of the said act would deprive complainant of the liberty of contract and of its property without due process of law and without just compensation and would likewise deny to it the equal protection of the laws, and would also be an interference with interstate and foreign commerce, the whole in violation of the Constitution of the United States; that the enforcement of said law would further violate the rights of complainant under the Constitution of the State of Louisiana, in the particulars all as herein at length set forth; on which account complainant invokes the jurisdiction of this Court to protect it against the aforesaid threatened invasion by the defendants of its said inherent rights so guaranteed by the Constitutions of the United
25 States and of the State of Louisiana.

A further reason why this Honorable Court has and should take jurisdiction herein is to prevent and avoid the multiplicity of suits which might, and complainant fears would, be instituted in the name of the State of Louisiana by or through said defendants, or some of them, against complainant, as for the daily violations of the said law, unless the operation and enforcement thereof shall be stayed by this Honorable Court until the final determination of the legality and constitutionality of the said law.

Complainant shows that unless the enforcement of the said act be restrained and enjoined, William N. McFarland, Supervisor of Public Accounts for the State of Louisiana, and styled in said act as ex officio Inspector of Sugar Refining of Louisiana, will demand from complainant compliance with, and seek to enforce against complainant the provisions of said act and the regulations which he will, pursuant to the authority of said act, formulate and promulgate as purporting to affect the business of sugar refining in Louisiana, including complainant's said business; and said Luther E. Hall, as Governor of the State of Louisiana, and Ruffin G. Pleasant, as Attorney General of the State of Louisiana, will, as complainant is advised and has reason to believe and does believe, institute, or cause to be instituted, proceedings and suits against complainant for the enforcement of the provisions of the said act and of the regulations so to be formulated and promulgated, as well as for the enforcement and collection of said unreasonable and confiscatory pecuniary and other penalties in said act provided.

26 To the end, therefore, that you orator may have that relief which it can only obtain in a court of equity and that the defendants may each answer the premises (but not upon oath or affirmation, the benefit whereof is hereby expressly waived by your orator), it now prays:

1. That it be adjudged nd decreed that Act No. 10 of the Extraordinary Session of the General Assembly of Louisiana of 1915, approved June 10, 1915, is illegal, null and void, because in contravention of the Constitution of the United States, and particularly paragraph 3 of Section 8 of Article I thereof, and the Fourteenth Amendment thereto, and of the Constitution of the State of Louisiana, and particularly Articles 2, 7, 16, 17, 21, 33, 48, 84, 170, 190 and 232 thereof.

2. That it be adjudged and decreed that your orator has no adequate relief at law for the injury which would result from the threatened enforcement of the said act and regulations and that such injury would be irreparable.

3. That it be adjudged and decreed that your orator be granted writs, both temporary and permanent, of injunction, issuing out of and under the seal of this Honorable Court against the defendants, enjoining and restraining them, and each of them, and every person claiming to act under and by virtue of the authority of the said act, from in any way enforcing or attempting to enforce, against complainant the said act or any of the provisions thereof, or any of the regulations promulgated or to be promulgated thereunder; and that, under and by virtue of the provisions of Section 266 of the Judicial Code of the United States, a restraining order may be forth-

27 with granted against the defendants and each of them, enjoining and restraining them as herein stated, until this Honorable Court shall determine in due course whether a temporary injunction with like effect shall be granted pendente lite.

4. Your orator further prays that the Court may grant unto complainant writs of subpœna issuing out of and under the seal of this Honorable Court to be directed to the said defendants, commanding

them, and each of them, on a certain day and under a certain penalty, to be therein inserted, to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand, do, perform and abide by such further order and decree as to the Court may seem meet, and also that a temporary restraining order be granted forthwith as hereinabove prayed, and, that in due course a provisional injunction to the same purport, tenor and effect as hereinbefore set forth and appears, be granted during the pendency of this action.

5. And your orator further prays for such other and further relief as may be meet and proper in the premises, and as may be just and agreeable to equity and as to this Honorable Court may seem fit and proper.

And your orator will ever pray, etc.

THE AMERICAN SUGAR REFINING COMPANY,
By J. T. WITHERSPOON.
JOSEPH W. CARROLL,
GEORGE DENEGRE,
HUGH C. CAGE,
Solicitors for Complainant.

28 STATE OF LOUISIANA,
City of New Orleans:

Jackson T. Witherspoon, having first been duly sworn, deposes and says:

That he is the Assistant Treasurer of The American Sugar Refining Company, the complainant named in the foregoing bill of complaint, and that he is the manager and legal representative thereof in Louisiana; that except affiant, there is no general officer of said corporation present within the State of Louisiana; that affiant has subscribed the said bill of complaint and that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that, as to those matters, he believes it to be true.

(Signed) J. T. WITHERSPOON.

Sworn to and subscribed before me this 23rd day of June, 1915.

(Signed) HENRY G. McCALL,
[SEAL.] *Not. Pub.*

29 EXHIBIT "A" ATTACHED TO BILL OF COMPLAINT.

Filed June 23rd, 1915.

Exhibit "A."

Statement Louisiana Sugar Purchased by the American Sugar Refining Company, New Orleans, La., Seasons 1891–2 *to* 1913–14, *Inclusive.*

Seasons.	Crop statistician.	Total crop, tons.	Purchased by A. S. R. C., tons.	Ship'd north by A. S. R. Co.	Per cent crop.	Purchased weight.
1891–2.....	Bouchereau.....	160,937	86,588	29,008	53.80	Estimated
1892–3.....	"	201,816	101,204	14,712	50.14	"
1893–4.....	"	265,836	111,590	4,610	41.97	"
1894–5.....	"	317,306	151,344	36,589	47.69	"
1895–6.....	"	237,720	71,048	3,285	29.88	"
1896–7.....	"	282,009	100,403	.....	35.60	"
1897–8.....	"	310,447	158,706	.....	51.12	Actual
1898–9.....	"	245,511	135,964	19,783	55.38	"
1899–1900...	"	147,164	54,786	.....	37.22	"
1900–1.....	"	270,338	123,898	.....	45.83	"
1901–2.....	"	321,676	168,910	.....	52.51	"
1902–3.....	"	329,226	151,498	.....	46.01	"
1903–4.....	"	228,476	97,041	436	42.47	"
1904–5.....	"	355,530	199,445	33,997	56.10	"
1905–6.....	"	336,751	172,082	24,032	51.10	"
1906–7.....	"	188,571	80,455	.....	42.66	"
1907–8.....	"	306,924	178,764	36,811	58.24	"
1908–9.....	The A. S. R. Co..	307,918	138,971	1,165	45.13	"
1909–10.....	"	301,051	112,407	.....	37.34	"
1910–11.....	La. Sug. P. Assn.	305,352	152,565	34,920	49.96	"
1911–12.....	"	309,817	158,547	54,308	51.27	"
1912–13.....	.....	170,000	75,492	36,017	44.41	"
1913–14.....	.....	270,000	144,405	51,465	53.48	"
(to Jan. 15, 1914.)					47.43	

30 EXHIBIT "B" ATTACHED TO BILL OF COMPLAINT.

Filed June 23rd, 1915.

Exhibit "B."

Comparative Table of Meltings at Refineries of the American Sugar Refining Company in Louisiana.

Tons of 2,240 Pounds.

Year.	Total meltings.	Meltings Louisiana sugar.	Percentage Louisiana meltings.
1892	146,025	67,651	.46
1893	180,046	91,791	.51
1894	140,412	98,560	.70
1895	125,007	107,075	.85
1896	120,140	83,142	.69
1897	131,216	87,250	.66
1898	172,365	167,991	.97
1899	171,918	106,524	.62
1900	196,977	77,311	.39
1901	203,353	118,087	.58
1902	282,534	166,584	.59
1903	257,659	142,469	.55
1904	280,843	107,947	.38
1905	251,948	148,829	.59
1906	271,455	143,867	.53
1907	267,999	83,622	.31
1908	268,559	144,674	.54
1909	267,641	140,273	.52
1910	319,453	122,712	.38
1911	324,449	101,121	.31
1912	342,287	86,811	.25
1913	352,757	63,091	.18

31 EXHIBIT "C" ATTACHED TO BILL OF COMPLAINT.

Filed June 23rd, 1915.

EXHIBIT "C."

Act No. 10.

House Bill No. 6.

By Mr. Fontenot.

An act regulating the business of refining sugar, in so far as it is necessary to protect same and the public from monopoly therein, and establishing to that end the rules and conditions on which it may be carried on in the State, and prohibiting certain irregularities and practices in said business; defining the business of refining sugar; imposing an inspection fee upon refined sugar; creating the office of State Inspector of Sugar Refining, and such assistants as may be necessary, and providing that the Supervisor of Public Accounts of Louisiana shall be ex-officio State Inspector of Sugar Refining and for his salary, duties, and those of his assistants; providing for the sale or other disposition of refineries kept idle for illegal and monopolistic purposes; permitting the appointment of receivers in certain cases of violation of this law; fixing penalties for the violation of this law, and of the regulations to be promulgated by the State Inspector of Sugar Refining; providing rules of procedure and evidence for the enforcement hereof, and providing for the enforcement of this act by suit to be instituted on behalf of the State by the Attorney General or by the District Attorney of each parish, under the direction of the Attorney General or of the Governor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the business of refining sugar in the State
32 of Louisiana is hereby recognized and declared to be impressed with a public interest by reason of the nature and by reason of the monopolization thereof; and the sugar refineries now and hereafter operating in the State, in the business of buying raw sugar and manufacturing refined sugar and in the business of manufacturing refined sugar whether the raw sugar is bought or otherwise handled are hereby declared to be public utilities.

Section 2. Be it further enacted, etc., That the office of State Inspector of Sugar Refining is hereby created, and the Supervisor of Public Accounts for the State of Louisiana is hereby made ex-officio State Inspector of Sugar Refining.

Section 3. Be it further enacted, etc., That any person engaged in the business of refining sugar within the State shall make monthly reports to the State Inspector, which shall show the amount of sugar bought and the price; the amount of sugar sold, and the price;

the amount of sugar contracted to be sold, and the price; the amount of sugar held on storage, and the cost of holding it; the number of days and hours in operation; the amount of raw sugar taken into process; the amount of refined sugar produced; the repairs made; the amount expended in repairs and in upkeep; the amount expended in general and in overhead charges; the condition of the plant, and the reason for any and all stoppages and for any non-operation of the plant. The data collected under this section shall be consolidated and tabulated every six months, without making any reference therein to any particular refinery, and said tabulation shall be open to the inspection of the public.

33 Section 4. Be it further enacted, etc., That it shall be the duty of said Inspector to inspect the books and accounts, and records, of all concerns engaged in the business of refining sugar at least twice a year; and he may at the direction of the Governor make public such compiled and tabulated data as he may deem beneficial to the sugar trade, but he shall not make public any data relating to any particular refinery. He may also call for special reports from said refineries covering any branch of their business at any time, provided that no special report shall call for the disclosure of any trade secrets.

Section 5. Be it further enacted, etc., That every person engaged in the business of refining sugar shall pay, monthly, to the State Inspector of Sugar Refining, for the credit of the fund for the Inspection of Sugar, one-half cent on each and every three hundred and fifty pounds of granulated sugar made, which sum shall be paid into the State Treasury for the account of the fund for the inspection of sugar. Out of the fund hereby created shall be paid a salary of six hundred dollars per annum to the State Inspector of Sugar Refining, and the salaries of such assistants as he may designate, and all expenses of his office.

Section 6. Be it further enacted, etc., That it is declared to be unlawful for any person engaged in the business of refining sugar to buy sugar on an ex parte test of its quality, or upon any other weights than those of the actual net contents of any bag or package; and, in furtherance of this prohibition, the State Inspector of Sugar Refining is empowered and he is hereby directed to formulate, and to promulgate, by publication in three consecutive editions of a newspaper published in the City of New Orleans, such reasonable regulations as he may deem proper, and he may,

34 also, formulate and promulgate, from time to time, in the same way, such other reasonable regulations, affecting any branch of the business of sugar refining, as may be conducive to the public interest, and to the prevention of monopoly in the business of refining sugar, or the protection of the public from the consequences thereof.

Section 7. Be it further enacted, etc., That any person engaged in the business of refining sugar within this State who shall systematically pay in Louisiana a less price for sugar than he pays in any other State shall be prima facie presumed to be a party to a monopoly or combination or conspiracy in restraint of trade

and commerce, and upon conviction thereof shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so. Any person convicted of violating the provisions of this section shall have his license to do business in Louisiana revoked and cancelled; and any domestic corporation shall be liquidated, and any foreign corporation shall be ousted from the State, and its property sold. If the refining business of any person, firm or corporation is conducted in violation of this provision of this Act, or in violation of the obligation to operate any refinery as a public utility, the court may if irreparable injury to the public interest is shown appoint a receiver over such business at any stage of the proceedings, and the receiver may after he has been sworn and has given bond in such amount as the court shall have fixed be authorized to carry on the business, if the public interest requires it, until the termination of the suit.

Section 8. Be it further enacted, etc., That, whenever it shall be made to appear to the satisfaction of any court of com-
35 petent civil jurisdiction, by affidavit or otherwise, either in limine or after trial, that any refinery has been closed or kept idle for more than one year, it shall be presumed that such refinery was closed and is being kept idle for the purpose of violating or in aid of a violation of this Act, or of the laws of the State forbidding monopolies, combinations and conspiracies in restraint of trade and commerce, but it shall be the duty of the court to receive and consider any and all evidence whether by affidavit or otherwise which may rebut this presumption; and if the court shall find that the facts do not fairly rebut the presumption herein established, then it shall issue an order to the owner of such refinery, requiring that same be sold to bona fide third parties within a delay to be fixed by the court not to exceed six months from the date of such order, and if, at the expiration of that time, said plant be not sold, the court shall appoint a receiver to take possession of same, under such bond as it may fix, and said receiver shall be authorized to make sale, or lease, or other disposition of same, under the direction of the court, all within twelve months of the order appointing him. In computing said period of one year, any plant shall be treated as idle which has not been operating bona fide. No sale or lease under this section or under this act shall be made to any individual who has been connected with the management of said refinery nor to any corporation nor firm composed in whole or in part of said individuals and no corporation or partnership shall buy or lease said plant if more than 30 per cent of its stock be held by former stockholders of the offending corporation. Provided all sales by receivers under this or other sections of this Act shall be made according to the law governing Sheriff's sales.

36 Section 9. Be it further enacted, etc., That any person, firm or corporation, owning or operating a refinery who is charged with violating this law, and shall be made defendant in a suit by the State for forfeiture of charter, or for cancellation of license to do business in the State, and for ouster therefrom, may, upon showing by the State that the conspiracy, monopoly, or acts

charged are detrimental to the general public welfare, be ruled into court, at any stage of the proceedings, to show cause why an injunction should not issue, or a receiver be ordered to take charge of the defendant's business, with power to operate after having been sworn and given bond as fixed by the court. From the order of the judge, upon any such rule, a suspensive appeal without bond shall lie on the original papers, returnable within five days; and in the appellate court said cause shall be heard and determined within forty days after the appeal is lodged, provided should said appeal be lodged during the vacation of said court said period of forty days shall begin immediately after the termination of said vacation.

Section 10. Be it further enacted, etc., That the violation of any of the provisions of this Act, not otherwise provided for, or of any of the regulations promulgated by the State Inspector of Sugar Refining shall be punished by a fine of not less than fifty dollars and not more than twenty-five hundred dollars. Each day's violation of this Act shall constitute a separate offense. This fine, and any other fines, imposed in this Act shall be recovered, and the enforcement of any provisions of this Act may be had in any court of competent civil jurisdiction, at the suit of the State through the Attorney General on his own motion, or through the District Attorney of the district in which the defendant is domiciled,
37 or in which the offense has been committed, when so directed by the Governor, or by the Attorney General.

Section 11. Be it further enacted, etc., That in any suit instituted under this Act the judge shall give to books, letters and other documents (or apparent copies thereof), of the defendant full effect as being what they purport to be and as establishing the facts carried on their face unless there is sufficient rebuttal or countervailing proof against same; and such books, letters, or other documents (or apparent copies thereof), shall be received in evidence without other formality than proof of their having been in the archives or in the possession or under the control of the defendant; and the judge shall receive in evidence any report by any legislative committee of the State of Louisiana, or of the Senate or House of Representatives of the United States, or of any bureau or department, or of any commission, organized or acting under the authority, either of the State of Louisiana or of the Senate or the House of Representatives of the United States pertinent to the issue, and likewise he shall receive in evidence any record or parts of the same of any court of any State, or of the United States, in any suit or legal proceeding to which the defendant is or was a party, provided that the whole of any such record shall be produced, unless it is shown by the certificate of the custodian thereof that the whole record is not obtainable and provided further the testimony of a witness shall not be received unless the party against whom same is offered has had the opportunity to cross-examine; but the defendant may put such record in evidence whether the State or other plaintiff has had the right to cross-examine or not, and any such report or record
38 or testimony shall be prima facie evidence of the facts set forth therein, subject, however, to rebuttal by any competent evidence.

Section 12. Be it further enacted, etc., That in all cases under this law, the defendant shall file all exceptions in limine litis, if need be in the alternative, after the usual delays and such additional delays as the Court may allow, provided, however, that a plea to the jurisdiction shall not be considered waived by other pleas or exceptions filed under the reservation thereof. The Judge shall take up such exceptions in preference over all other business and shall decide all questions raised therein within ten days after submission, and his ruling shall have the effect of res judicata, unless the party cast shall appeal, within 5 days. The appeal shall be returnable to the Appellate Court within ten days, where the case shall be heard and determined within forty days. Should said exceptions be overruled by final judgment of the Appellate Court, the defendant must file his answer covering all questions of controverted fact within fifteen days thereafter, and the case may be set down for trial on the application of either party, in which case the Judge shall take up the consideration of the matter, in preference over all other business.

Section 13. Be it further enacted, etc., That any and all interlocutory judgments in cases affected by this Act not otherwise provided for herein shall be appealable within five days, and shall be heard and determined in the appellate court within twenty days after appeal is lodged and any interlocutory judgment not appealed except those rendered during the progress of the trial shall be final; and shall not be reopened on final appeal.

39 Section 14. Be it further enacted, etc., That the district attorney, prosecuting any case to judgment for the State under this Act, shall be paid such reasonable fee out of the property of the defendant as the court may fix, same to be taxed as costs.

Section 15. Be it further enacted, etc., The business of refining sugar within the meaning of this Act is hereby defined to be that of any concern that buys and refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys and refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it.

Section 16. Be it further enacted, etc., That the word "person," or "persons," whenever used in this Act shall be deemed to include all firms, and all corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Section 17. Be it further enacted, etc., That all laws or parts of laws, in conflict herewith are hereby repealed.

L. E. THOMAS,
Speaker of the House of Representatives.
THOMAS C. BARRET,
Lieutenant Governor and President of the Senate.

Approved: June 10, 1915.

L. E. HALL,
Governor of the State of Louisiana.

A true copy:

W. F. MILLSAPS,
Secretary of State.

40 *Order to Show Cause and Granting Temporary Restraining Order.*

Filed June 23rd, 1915.

In the District Court of the United States for the Eastern District of Louisiana. In Equity.

THE AMERICAN SUGAR REFINING COMPANY
versus
WILLIAM N. MCFARLAND et als.

Upon consideration of the foregoing Bill of Complaint, with its exhibits and affidavit,

And the Court considering that the application for an interlocutory injunction should be heard and determined by three Judges:

It is ordered and decreed that the defendants named in said Bill of Complaint do show cause on a day to be hereafter fixed why an interlocutory injunction, pendente lite, shall not issue herein, enjoining and restraining them, and each of them, from enforcing, or attempting to enforce, or causing to be enforced or attempted to be enforced, against complainant, the provisions of Act No. 10 of the Extraordinary Session of the General Assembly of Louisiana of 1915, and any and all regulations which may be formulated and promulgated thereunder.

And it is further ordered and decreed that meanwhile a temporary restraining order be, and it is hereby, granted, allowed and issued, restraining and enjoining said defendants, and each of them, to like effect, until a hearing and determination of the application of said complainant for an interlocutory injunction pendente lite.

Done and signed at New Orleans, this 23 day of June, 1915.

(Signed) RUFUS E. FOSTER, *Judge.*

41 *Return and Answer of Defendants.*

Filed September 21st, 1915.

United States District Court, Eastern District of Louisiana. In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
vs.
WILLIAM N. MCFARLAND et als.

Now into Court, through undersigned counsel, come the defendants herein, who, before answering the bill of complaint herein, by paragraphs, say:

The complainant comes into Court with unclean hands, and, for that reason, has no standing to claim an equitable hearing in this Court upon the things and matters set up in the bill. For specification of this charge, defendants say:

I.

The complainant was organized, and has continuously been, and is now being, conducted, as a monopoly, combination and conspiracy in restraint of trade and commerce in the business of buying, refining and selling sugar throughout the United States, and, in particular, said monopoly having given, and now giving, it practically completes control of the sugar trade in Louisiana, it has continuously used, and is yet using same to plunder the producers of raw sugar in said State, by fixing the price at which it buys raw sugar in said State at an arbitrary sliding differential below the true value thereof in the markets of the world; said differential being such as to result in a loss of several million dollars a year to the producers of raw sugar in said State, in favor of complainant and of the few minor independent buyers of sugar it has chosen not to eliminate from the trade, while refined sugar is sold at the same price in New Orleans as in New York. Complainant's control of said sugar trade has been used to further oppress and impoverish the sugar producers of Louisiana, to its own enrichment, by a long and continuous manipulation of the prices of the grocery grades of sugar produced in the State, with the result of compelling said producers to decrease

42 the manufacture of said grocery grades at a loss to them of more than a million dollars annually, all of which is well established by complainant's own records, including its correspondence between its principal office in New York, and its branch office in Louisiana, said correspondence having been principally written and signed by the same J. T. Witherspoon, who, as complainant's manager in the State, with its full knowledge, consent, approbation and invitation, conducted its business in the State in

the corrupt manner set out above, and who now, on its behalf, brings, and makes affidavit to, this bill, demanding equity. Said records and correspondence were discovered in complainant's possession by the United States Government, and were by it introduced in evidence in the year 1912 in a suit brought on behalf of the United States, in the Southern District of New York, by its Attorney General, to enjoin the complainant from doing business because of its operating, and of its having operated, in violation of the anti-trust act, known as the Sherman law; and said case was finally closed without any word of denial or of explanation from J. T. Witherspoon, or from any other officer or person, of the methods of complainant's business in Louisiana, which said records and correspondence reveal. Said case remained open for the taking of testimony for more than two years after said records and correspondence were introduced, and complainant had full opportunity to present a denial or explanation thereof, said Witherspoon having been in frequent consultation, during said trial, with the attorneys of complainant, and having been, and still being in full health, and in the normal possession of his faculties, and being still in charge of its business as manager in the State of Louisiana, and being still engaged in conducting said business with the same effect upon the prices of raw sugar as that shown and established in said records and correspondence.

II.

Complainant's monopoly was established by consolidating the ownership of practically all the Louisiana refineries & of the other refineries which brought Louisiana raw sugar, with itself, through the issuance of its well-watered stock to the previous owners. The raw sugar produced in Louisiana has no avenue to market except through the refineries, where it must be refined before going to the consumer; and control of the refineries in Louisiana gave
43 complainant so great a preponderance as a buyer that, immediately upon its organization, it became vested with the power to fix the price of raw sugar, within all the territory where the raw sugar of Louisiana was sold. The planters in Louisiana who produced raw sugar, made many attempts to break up this control of their market, by uniting to establish a co-operative refinery of their own. No refinery can be built and operated without an investment ranging from two million to seven million dollars, and it would have taken the united strength of all the planters for such an enterprise. The efforts of the planters to unite for that purpose were all foiled, and complainant's monopoly remained unopposed, because of methods such as those shown in a letter found in the files of the American Sugar Refining Company, and concerning which, when introduced in evidence by the Government in the aforesaid suit, the American Sugar Refining Company remained mute; the writer of said letter being then, and being now, the manager of the American Sugar Refining Company in New Orleans, and its representative in this Court of Equity, and the addressee of said letter being H. O. Havemeyer, who was President of the American Sugar Refining

Company from its organization until his death in 1907; said letter having been written, sent, received and acted upon according to the tenor thereof, same being a typical illustration of the manner in which complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy thereof being as follows, to-wit:

"Dec. 12/06.

"H. O. Havemeyer, Esq., Pres't American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: I enclose clipping taken from this morning's paper relating to the planters' combination. It looks as though the promoters are not meeting with much success; in fact, I understand that they have only received a few answers to their circular, and most of these planters have not committed themselves, two of them being planters that I personally requested to write to the effect that they would not like to commit themselves until they looked further into the plan, the idea being, in this way, I could keep posted as to what is going on. At the last minute these two planters will withdraw from all connection with the scheme.

"Yours truly,

(Signed) "J. T. WITHERSPOON."

44 III.

The instructions and methods of said Havemeyer, President, to said Witherspoon, concerning said proposed planters' co-operative refinery are exhibited in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof, same being a typical illustration of the manner in which complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"December 3, 1906.

"Mr. J. T. Witherspoon, New Orleans, La.

"DEAR SIR: The newspapers have so ventilated their hostility to any combination among the planters that no doubt a renewal of the combination scheme will appeal to them to take another crack at it. Of course you will be active to know what is going on.

"To those of our friends who remain out of it you can intimate that it certainly would be to the interest of the trust to make as good terms with them as they get from the new refinery and which would not involve on their part any serious loss which the refining feature of it might involve.

"Yours truly,

"H. O. HAVEMEYER."

IV.

The methods of the complainant for the aforesaid illegal purpose, and the activity of said Witherspoon therein, are exhibited in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction herein applied for is perpetuated, a true and correct copy of which is as follows, to-wit:

"Nov. 27/06.

"H. O. Havemeyer, Esq., Pres't American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: I have noticed today and yesterday that Mr. B. A. Oxnard seems to be quite active in endeavoring to interest the different planters in the combination movement and I thought it possible that you might through his brothers be able to learn whether or not this movement is another bluff, or if they are in earnest. Through several friends here we have succeeded in discouraging four planters from taking part in this affair.

"Yours truly,

(Signed) "J. T. WITHERSPOON."

V.

The methods of complainant for the aforesaid illegal purpose and the vigilance of said Witherspoon therein are exhibited by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 15/06.

"H. O. Havemeyer, Esq., Pres't American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: I wrote you yesterday about Spreckels, father and son, being in New Orleans. The father left here yesterday morning for San Francisco, and in so far as his individual presence here is concerned, I can learn of nothing to which any importance can be attached. Mr. C. H. Spreckels, however, remained here yesterday and left last night for New York. Coincident with his arrival, I was confidentially informed that the combination of the different sugar planters which was dropped last summer was again revived, and that a meeting will soon be had to again discuss the matter. Mr. C. A. Spreckels was most non-committal but he spent all of yesterday down at Chalmette, took in the refinery that we are erecting there from a distance and thoroughly inspected a piece of land further on down the river. While he did not state his purpose, nevertheless the parties accompanying him gathered the impression that he wanted to select

a site for a sugar refinery. I learned further that he stated, in the course of three weeks or a month he would visit New Orleans again for a prolonged stay. This in connection with the revival of the proposed planters' combination would indicate that these two interests are working together. I, however, pass this up to you for whatever it may be worth.

"Yours truly,

(Signed) "J. T. WITHERSPOON."

VI.

The complainant having found its monopoly in Louisiana a source of extraordinary profit, decided to build a new refinery,
46 at Chalmette, a few miles below New Orleans, in Louisiana, at a cost of $6,000,000.00, and the manner in which it combined the building of said Refinery with its conspiracy to monopolize the trade in the buying and refining and selling of sugar, by excluding the aforesaid planters from same, is shown by two of said letters, which were written, sent, received and acted upon according to the tenor thereof, same being typical illustrations of the manner in which complainant fortified its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of the first of which is as follows:

"Feb. 14, 1905.

"H. O. Havemeyer, Esq., Pres't The American Sugar Refg. Co., 117 Wall St., N. Y.

"DEAR SIR: Another movement is on foot here for the erection of a sugar refinery on a large scale; namely, a 5,000 daily capacity house. One of our local banks, with whom we do no business, is fathering the scheme. The Directors of this bank, I understand, have pledged themselves to subscribe to $150,000 worth of stock, and several sugar planters have subscribed $50,000 each, the scheme being to interest as many of the planters as possible, thereby being able to control their raw product. While I have been unable to get at the prospectus, still I hear that $1,000,000 is to be raised in New Orleans; when this is done New York parties will subscribe to $1,000,000 of the stock, with an additional $1,000,000 in bonds, making in all $3,000,000 available for this purpose. As some of our strong monied interests connected with the planting interests of this state, seem to be very much interested in this scheme, from present appearances it looks as if it will go through.

"In view of this, the idea has occurred to me that it would be wise for us now quietly to announce our purchase of the Chalmette property, with the intention of erecting a sugar refinery thereon, and as the capacity of this additional refinery, together with the one we now have, will be more than sufficient to supply the territory tributary to New Orleans, the erection of an independent plant will mean the absolute loss of money to all the refining interests of New Orleans. This, however, is only a suggestion, and nothing will be done until

you are heard from. I understand that so far local subscriptions to this scheme amount to $500,000.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters is as follows:

"Feb. 17/05.

"H. O. Havemeyer Esq., Pres't The American Sugar Refg. Co., 117 Wall St., N. Y.

"DEAR SIR: Your telegrams received reading as follows:

47 "1st. 'Announce Chalmette project 2½ million daily.'

"The time has not yet arrived to make this announcement in the public prints, owing to the property not yet being transferred. The announcement, however, will be quietly made to those where it will do some good in defeating the contemplated erection of a new refinery. Since writing you this morning, I have been led to believe that my talk last night with Mr. Farwell will have the effect for the time being at least that the promotion of the refinery fathered by him will be abandoned.

"2nd. 'Terminal Co. should secure for us refusal of the adjoining property to serve in case of need.'

"I have not yet had an opportunitw of seeing the Terminal Co. officials, but will do so, and endeavor to carry out your wishes.

"Yours truly,

"J. T. WITHERSPOON."

VII.

The instructions and methods of said Havemeyer, President, to said Witherspoon, concerning said proposed planters' co-operative refinery are exhibited in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof, same being a typical illustration of the manner in which complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows:—

"December 17, 1906.

"Mr. J. T. Witherspoon, New Orleans, La.

"DEAR SIR: You had better have some representative at all the meetings bearing upon the consolidation of planters or possible erection of a refinery.

"What they hope to get out of it is beyond me. They are getting better prices now than they could possibly get in New York, and it goes without saying that those who engage in refinery enterprise would at least lose all they expect to make on the raw end of it—to say nothing of jeopardizing their interest in the business.

"It is impossible for us to sell our surplus product unless we do it as we think best; when you are holding strong at 65 or 60 it is necessary for us, if we apprehend a decline, to accumulate the business that

is offered at 4.55 and when we have secured all of it, then to give you the privilege of opening it out in your territory.

"The despatch authorizing you to sell at 55 should have been sent you on the evening of the 15th at the latest. Through some
48 inadvertence it was not. Hereafter I shall send you a despatch when we are actually soliciting business under your fixed price so that you will know what we are about and can keep everything in hand, that it may be taken on authority from New York for you to do so.

"You understand that if there is any interference on your part by intimating to any of your agents what you will do, it will be against the interest of the Company, so you will have to be very reserved in this matter, and will kill our efforts to get the business.

"Yours truly,

"H. O. HAVEMEYER."

VIII.

The instructions and methods of said Havemeyer, President, to said Witherspoon, concerning said proposed planters' co-operative refinery are exhibited in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof, same being a typical illustration of the manner in which the complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"The American Sugar Refining Company.

"117 WALL STREET, NEW YORK,
"January 22, 1907.

"Mr. J. T. Witherspoon, New Orleans, La.

"DEAR SIR: I have your various communications. Don't forget to keep vividly before the minds of those who contemplate subscribing to the new refinery that they can make nothing at the Raw end of it, that the American Company will certainly outbid all competitors, and, in view of the demand not taking the present capacity of the refinery, the refining end of it cannot but be disastrously carried on.

"Yours truly,

"H. O. HAVEMEYER."

IX.

The methods of complainant for the aforesaid illegal purpose and the vigilance of said Witherspoon therein are exhibited by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the
49 injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"March 5th, 1907.

"Mr. H. O. Havemeyer, #117 Wall St., New York.

"DEAR SIR: Godchaux Merger. While appraisements have been made on several plantations connected with this merger, I understand that nothing will be done this year. Mr. Charles Godchaux has recently been elected President of the Whitney-Central National Bank, of this city which is one of the largest banks here, and I think for the time being his attention will be devoted to this institution. I have not forgotten your instructions to tie him up, and I think the time will soon be ripe for this.

"Levert Proposition. This is the crowd that were attempting to build a refinery without the merger feature. They have made vain attempts to secure subscriptions, but from what I can hear, they are no further advanced today than they were when they started, consequently, it is safe to predict that this scheme will never be born. Some of our friends here have done some excellent missionary work in connection with the scheme.

"Yours truly,

(Signed) "J. T. WITHERSPOON."

X.

The methods of complainant for the aforesaid illegal purpose and the vigilance of said Witherspoon therein are exhibited by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Dec. 14/07.

"Mr. W. B. Thomas, Pres't The American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: I have had occasion from time to time to advise Mr. Havemeyer of different movements here, contemplating the erection of a sugar refinery. The sugar planters of Louisiana have for a great many years been endeavoring to establish a co-operative refinery amongst themselves, but the distrust of one planter against another, coupled with the timidity of investing the necessary money, has heretofore prevented such a combination. The movement is again being revived, as per copy of circular, enclosed, which is being scattered broadcast throughout the state.

"A great many of my friends have at different times approached me in connection with this matter, and I have simply stated to them that The American Sugar Company is a fixture in New Orleans, and prepared to maintain its supremacy regardless of costs or consequences.

"Yours truly,

"J. T. WITHERSPOON."

XI.

The methods of complainant for the aforesaid illegal purpose and the vigilance of said Witherspoon therein are exhibited by another of said letters which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for is perpetuated, and a true and correct copy of which is as follows, to-wit:

"July 3rd/07.

"H. O. Havemeyer, Esq., Pres't American Sugar Refg. Co., #117 Wall Street, N. Y.

"DEAR SIR: Nothing has been done by the Levert crowd for some time past, toward securing subscriptions for the erection of a sugar refinery. This scheme seems to be dead.

"The Godchaux scheme, looking toward a combination of the different planters, is dormant; and while the estimates of the different planters desiring to enter this combination have been made, I understand that there has been a serious hitch amongst the promoters as to a basis of adjustment; consequently, for the time being, this plan has also been laid at rest.

"I have had several talks recently with Charles Godchaux, who seems to be most anxious to make a contract with us, for one year, for the sale of his individual sugars on the basis of ⅛ under the N. Y. quotation for 96° . . . but I told him that I did not think this company would make a contract of that character, for the reason that he insisted on the basis of settlement being the New York daily quotation, regardless of the price at which sugars will sell to arrive.

"He then branched off, and wanted to know, in case the combination went through, if an arrangement could be made with this company to buy the entire product of the combine on the basis of ⅛ under New York. I told him, in so far as I was concerned, I would oppose any arrangement whatsoever being made with the combination, and I was satisfied you would agree with me in this: that if the combination were eventually formed, they could not expect to sell this company their product. (Of course, this was a bluff.)

"I suggested to Godchaux also that a five-year contract might be made for his individual sugars, but he did not seem to desire this. Godchaux expects to be in New York for some time this summer, and will probably call on you to sound you. In the meantime, I would suggest that the matter be allowed to rest until I can see you in person some time in the fall.

"Yours very truly,

(Signed) "J. T. WITHERSPOON."

51

XII.

The Godchaux plantations were the largest in Louisiana in point of sugar production, and it was important to the preservation of complainant's monopoly to induce the owners of said plantatinos not to

95

co-operate with the other planters of the State in the building of the proposed co-operative refinery. This was done by reducing the arbitrary sliding differential between the price of raw sugar in New Orleans and the price thereof in New York from one-fourth of a cent, which it then averaged, to one-eighth of a cent in Godchaux's case, all as shown by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for is perpetuated, and a true and correct copy of which is as follows:

"January 7, 1907.

"Mr. J. T. Witherspoon, New Orleans, La.

"DEAR SIR: I think you ought to give Godchaux some written evidence that your intention is to allow him one-eighth of a cent off the New York price of his sugars, and get him to quietly drop any participation in the consolidation scheme.

"Of course such an obligation while not legally binding, would be morally binding, and I am sure would be as binding upon us as it would be upon him.

"Yours truly,

"H. O. HAVEMEYER."

XIII.

The methods of complainant for the illegal purpose of inducing said Godchaux to refrain from joining in with the other planters of the State to give competition to complainant's monopoly, and the vigilance of said Witherspoon therein are exhibited by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy of which is as follows, to-wit:

52 "Jan. 11, 1907.

"H. O. Havemeyer, Esq., Pres't The American Sugar Refining Company, #117 Wall St., N. Y.

"DEAR SIR: Yours of the 7th received. I am keeping a close observation on the different schemes here, which include Godchaux as well as the other combination. The moment the opportunity present itself, your suggestion is going to be carried out, but in my opinion it would be most unwise to place ourselves on record in writing with the party in question until he is in a receptive mood; otherwise I am only afraid he would use such writing to further his ends with his co-conspirators, by demonstrating that our company is afraid of such competition, as evidenced by the fact that he is trying to be bought off.

"Yours truly,

(Signed) "J. T. WITHERSPON."

XIV.

The designed destruction of spirit among the producers of raw sugar in Louisiana, by the lawless methods of complainant, is exhibited by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows:

"Feb. 17/05.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: Yours of the 14th. received. I am particularly anxious that you should do as Godchaux requests in this instance, as he is the largest seller of raw sugars on this market, and I have made it a point to cultivate him in every way possible. The Godchauxs are peculiar people, in that they are always harboring more or less imaginary wrongs. One is that this company will never do anything for them. They are crazy to erect a sugar refinery here of their own, and it is only abject fright with which they have been filled—that has prevented their ideas in this regard being carried out; they have had a plant in their possession for several years. Hence this will give you an idea as to why I am more than anxious for you to do what you can for them in this matter. They do not want any one to sample, or look after their interests. They leave this entirely to you, the same as they have done with us on their Louisiana Sugars. Although we received from them over 300,000 Bags this past season, they have never sampled or tested a single bag, accepting our samples and our tests. What Mr. Godchaux wants is the privilege of having the 10,000 Bags shipped to you direct the same as if you had bought it, the sugars to be billed to you at cost and freight price paid by them, you to receive it, settle with the seller on the methods of ascertaining the test in vogue in New York, and then whatever the C. & F. market price is the day the sugars arrive in New York, you in turn to settle with Godchaux for the difference. If you can possibly do this, please do so;
53 otherwise, of course Godchaux will have to take care of the matter himself.

"Yours truly,

"J. T. WITHERSPOON."

XV.

Being in control of the refineries in the State, the complainant's monopoly was protected against competition, from independent refiners at New York and Philadelphia by the freight rates on so heavy a commodity as sugar, but not satisfied with that, complainant utilized its connection with refiners elsewhere to influence and coerce them to stay away from Louisiana, and to give it a free hand, as is shown in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being

a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 24, 1903.

"H. O. Havemeyer, Esq., Pres't The American Sugar Ref'g Co., #117 Wall St., N. Y.

"DEAR SIR: For years past, R. B. Scudder, a broker of this city, has been endeavoring to sell Louisiana Sugars to some Northern refiner. This refiner has been the McCahan Refinery of Philadelphia. Scudder left here on Saturday, supposedly for Philadelphia. This morning I saw his man on the Exchange talking to several brokers who handle refining grades of sugars. I was also informed by another broker that Scudder had made the statement, if he could secure the refusal on a sufficient amount of sugars, he could place it for holders on the basis of 3½ for 96 test in New Orleans. It was this information which caused me to wire you this morning as I did, under the impression that you have some influence with McCahan, and if so, that you could put a stop to any interference on their part in our buying this crop. The feeling here now is so acute, that when one fellow starts shipping East, any number will follow.

"I also found out this morning, that the Kenilworth Factory, owned by an English Syndicate, had the refusal for a given amount of sugar on a New York steamer sailing Monday. This was confirmed by the agent of this concern. I took the matter up with him and secured from him the refusal on the remainder of his crop, about 4,500,000 pounds at a uniform price of ¼ under New York day of arrival. This refusal I have wired Mr. Mott today, and now await his answer.

"Yours truly,

"J. T. WITHERSPOON."

XVI.

Finding that an "outside" refiner, operating in New York, had authorized a broker to buy Louisiana raw sugar for his ac-
54 count, complainant took advantage of its monopoly to threaten a boycott of any producer who would sell to him, as shown in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 25/03.

"Mr. H. C. Mott, 117 Wall St., New York.

"DEAR SIR: Receipts of plantation sugars today were 8,925 Bbls. & 12,945 Bags, out of which we bought on the Exchange 6,263 Bbls. & 2,394 Bags, as per memorandum enclosed. Besides this,

we bought to arrive before Dec. 15th—3,600 Bags on the 3 7/16 basis. In addition to the above, there were consigned us account of past contracts 8,304 Bags.

"Henderson bought nothing on the Exchange, but received account of past contracts 2,344 Bags. 499 Bbls. were stored, and the balance of the receipts was taken by Dealers.

"Acting on Mr. Havemeyer's telegram of yesterday, we have made the following purchases:—for delivery during December—4,500,000 lbs. Firsts at a price of ¼ under the N. Y. quotations for 96 test day of arrival of each shipment; 5,000,000 lbs. First Sugars at 3/16 under the N. Y. quotations day of arrival.

"750,000 lbs. Seconds at ¼ under N. Y. quotations for 89 test day of arrival in New Orleans.

"These purchases will be reported to you tonight at the bottom of the slip enclosed and will be considered in our stock of sugars to arrive.

"I received your telegram concerning rumors of Seymour offering Arbuckle at 3.68 for 96. I could find no evidence of this fact, for these parties showed no signs of trying to buy sugars on the Exchange. It may be they have made some contracts in the country, and if your information is correct, the sugars will arrive later on.

"I have, however, found out that R. B. Scudder, who is now in New York, did buy some sugars this morning, presumably for some refiner's account. I also found that Scudder had put bids on several thousand barrels — sugar on the Exchange, but being considerably ignorant of the test values, and by threats to severely let alone those brokers who would sell him, we succeeded for to-day in preventing his buying anything. From this I infer that Scudder is the man who has made the offer to Arbuckle. I shall watch things closely and keep you fully advised.

"To-morrow is a holiday on the Exchange.

"Yours truly,

"J. T. WITHERSPOON."

XVII.

The same boycotting methods were used habitually, and
55 the raw sugar producers of Louisiana were, in another case, where a refiner in New York was endeavoring to buy their product, threatened with loss, injury and destruction if they sold to him, as shown by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 22/07.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: The receipts of plantation sugars today were 6,354 Bbls. and 14,088 Bags, out of which we bought on the Exchange 495 Bbls. and 9,797 Bags, as per memorandum enclosed."

"Henderson secured 219 Bbls. and 1,670 Bags. 1,213 Bbls. and 196 Bags were stored, while the balance of the receipts was bought by dealers. Quite a demand sprang up this morning from the dealing trade, resulting in an advance of a full sixteenth, and some instances ⅛ over yesterday's basis, some grades selling yesterday at 3½ and 3 9/16 selling today at 3⅝. This is reflected, as you will notice, in our decreased purchases of grocery grades, which as a rule is indicated by the number of barrels we report to you daily.

"For the past three or four days we have had very bad weather in this section of the country, and rain has been general throughout the sugar district. This is going to affect the receipts, and it is anticipated that next week the receipts will not be liberal. Then again, as I have repeatedly written you, numerous planters are holding back their sugars on plantation, and are not shipping to this market, expecting to realize better prices later on.

"Mr. P. J. Smith, of Smith & Shipper, New York is now here, is stopping at one of our best hotels, and in his room is receiving delegation after delegation of sugar sellers and brokers, but so far he has been unable to accomplish anything.

"While I have not openly stated it to any one, nevertheless I believe it is the impression that we have stood the brunt of the buying so far, and now that sugar is selling at a comparatively low price, if any large handlers should break away for the sake of a paltry 1/32 or so, after the interloper leaves and no longer becomes a buyer, it will be a case of the "devil take the hindmost." As a result, I have not found it necessary today to advance our limits.

"Yours truly,

"J. T. WITHERSPOON."

XVIII.

The effect of the coercion, boycotting and the like, of complainant, in terrorizing the sugar trade, in breaking the spirit of those engaged therein, and in excluding all others than itself from
56 the buying of raw sugar, is shown by another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction herein applied for is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 25/07.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: The receipts of plantation sugars today were 6884 Bbls. and 20,242 Bags, out of which we bought on the Exchange —775—Bbls. & 24,843 Bags, as per memorandum enclosed.

"The Henderson Refinery secured 154 Bbls. & 2170 Bags. About 190 Bbls. & 937 Bags were stored, while the balance was taken by dealers. Included in the portion secured by dealers were about 300 packages bought by the Colonial Sugar Co., to be refined in their refinery at Gramercy, La. The Federal people, through Jno. S.

Seymour, who have been trying for some time past to buy sugars at the same price that we pay, abandoned their former tactics, and today endeavored to secure some lots at 1/32 over. But for the suspected reasons outlined in some of my former letters, brokers could not summon sufficient courage to accept such a small advance. However, if this should be repeated from day to day, they may succeed in buying some sugars. At 1/16 advance, naturally, they could secure a large line. Mr. Smith, of Smith & Shipper, is here directing the operations, but as indicated, I have been unable to learn of any actual purchases they have made.

"Yours very truly,

"J. T. WITHERSPOON."

XIX.

The extent of the control of complainant over the Louisiana market for raw sugar, and the constant exercise of it, is shown in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein in perpetuated, and a true and correct copy of the first of said letters being as follows, to-wit:—

"Nov. 14/07.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: The receipts of plantation sugars today were 7,213 Bbls. & 10,007 Bags, out of which we bought on the Exchange 3,991 Bbls. and 9,038 Bags, as per memorandum enclosed.

"The Henderson Refinery bought 831 Bbls. & 600 Bags.
57 325 Bbls. & 250 Bags were stored, while the balance of the receipts, with the exception of 500 Bbls. remaining unsold, was taken by dealers.

"I heard a reliable rumor today that some Eastern refinery, presumably Arbuckles', was negotiating here for one to two cargoes of raw sugars. Promptly upon hearing this I wired Mr. Havemeyer, and asked if he had any objections.

"I have just received your telegram regarding the chartering of vessels to bring sugars to New York, and will write you later on tonight.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters is as follows:

Dec. 12, 1901.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: Since wiring you last night, I have learned for a fact that Godchaux has sold Arbuckle 7,000 Bags Contrifugal Sugars at 3 9/16 flat F. O. B. Steamer New Orleans. New Orleans weights and test to prevail. This is of course 1/16 more than

we have so far paid for these sugars, and now that I know the attitude of these parties, our actions here will be such as to prevent any future sales of this character.

"Yours truly,

"J. T. WITHERSPOON."

XX.

The extent of the control of complainant over the Louisiana market, and the constant exercise of it, is shown in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of the first of said letters being as follows:

"Nov. 1, 1904.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: Godchaux told me in confidence this morning that he had a telegram from the Federal Refinery, asking the price on a cargo of Louisiana Sugars, and intimating that if 4 5/16 were named in a large cargo, this price would be paid. It is also rumored that the same inquiry was received from Arbuckles.

"The receipts today were light, and outside of those consigned to us, the bulk of the sugars arriving were Grocery Grades, being bought up by Henderson and the trade at from 4 1/16 to 4 1/8 basis 96. Up to this writing we have only bought about 100 packages.

58 "I don't think that the outside refineries will be able to secure many sugars through parties buying from the daily offerings on the Sugar Exchange, as we can keep an eye on such offerings and stop any large purchases being made. The danger will lie in contracts, that is, buying a given amount to be delivered in New Orleans within a certain time. It is for this reason I wired you today, in the event any sugar being offered us at 4c., or even 4/16 for 96 test, for delivery during November, should we accept same.

"I also wired you last night that we were offered 4,000,000 lbs. sugars on a sliding scale of 3/16 below N. Y. quotation for 96, day of arrival. Your last instructions were to buy nothing under 1/4 below New York quotations day of arrival, but as Henderson made some purchases yesterday on the basis of 3/16 and also at 4c. flat, I deemed it advisable to acquaint you with these facts, so with the information in hand, you could act upon it.

"Yours truly,

"J. T. WITHERSPOON."

The following is a true and correct copy of the second of said letters:

"Nov. 29/07.

"Mr. H. O. Havemeyer, Pres't The American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: I note from your letters the necessity of securing all the raw sugars here possible, particularly during the month of December, as you will require considerable quantities shipped to New York. So far the independents have not secured much sugar, and up to the present time the Federal have bought only 9,000 bags, and I do not think Arbuckles' purchases will amount to over 4,000 bags. We seem to have this feature of the business pretty well in hand, and unless there is some treachery or trickery, I don't think either of these concerns will be able to buy any large quantity unless at a material advance over what we are paying.

"Yours very truly,

"J. T. WITHERSPOON."

XXI.

The illegal course of said Witherspoon, in managing complainant's business in Louisiana, in the manner set forth herein, constituted a continuous conspiracy in restraint of trade, existing down to date in all of which he acted with the knowledge, consent, approbation and invitation of the executive officers of complainant corporation, thereby making them co-conspirators with complainant in the illegal course set out herein, as shown in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

59 "The American Sugar Refining Company of New York.

"117 WALL STREET, NEW YORK,
"Nov. 25, 1907.

"Mr. J. T. Witherspoon, The American Sugar Refining Co., New Orleans, La.

"DEAR SIR: Your message of the 23rd inst. was duly received this A. M.

"I beg to confirm my telegram to you in reply, authorizing the closing of the charter of the S. S. "El Mar." I have also wired you asking what further quantity you can ship during December. Mr. Havemeyer wants to bring here double the quantity already chartered for, so you will need to buy everything you can and keep out competitors. I have acquainted him with the contents of your letters to me of Nov. 21st and 22nd, to which he tells me 'Mr. Witherspoon has absolute discretion as to price he shall pay'—of which I am very glad.

"Yours very truly,

"HENRY C. MOTT."

XXII.

The power and the inclination of complainant, through its aforesaid monopoly, to fix the price of raw sugar, at pleasure, even upon the New York market, which is the principal and ruling one in the United States, and the fraud, damage and injury perpetrated by complainant upon the producers of raw sugar, in the exercise of that power in Louisiana, are shown by another of said letters; which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Oct. 27/04.

"Mr. H. C. Mott, No. 117 Wall St., New York.

"DEAR SIR: It was mentioned to me yesterday, that some of the parties here who have sold us large lots of sugar, at a fixed price under the New York price day of arrival, would probably enter into an arrangement with the Federal Refinery of New York, whereby this concern throughout November and December would buy small lots on the New York market at not less than 4 1/4 for 96 test, and thereby fix the New York quotations at this figure, which in turn would be the supposed figure for settlements of sugars arriving here. While this would be a most contemptuous plan, still there are some people here not too good to make the attempt, and if the Federal is willing, I am satisfied that some of the large buyers here would reimburse them for any loss they might sustain.

"I only mention this to you to show you what might possibly take place, and for you to be on your guard.

"The Sugar Exchange posted a telegram yesterday, stating that Arbuckles had bought 5300 tons Java virtually spot, at the equivalent of 4 7/32. Your telegram yesterday gave the market as 4 1/4 New York. I therefore wired you this information last night, stating that we would withhold settlement for yesterday's arrivals of sugars until receipt of your reply. So far this has not been received.

60 "Commencing with the latter part of next week, the daily arrivals here account of contracts already made—will be large. Those contracts, as you know, will be settled at a differential under the New York price day of arrival. Hence it behooves you to depress the N. Y. Market as much as possible for the lower the N. Y. quotation is, the less these sugars will cost us.

"Yours truly,

"J. T. WITHERSPOON."

XXIII.

The power and the inclination of complainant, through its monop-ly, to fix the price of raw sugar, at pleasure, in Louisiana, and the frauds, damage and injury perpetrated by complainant in the exercise of that power upon the producers of raw sugar in Louisiana,

are shown in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"Nov. 1, 1902.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: Receipts to-day were 8,528 packages, out of which we secured 1,451 packages as per memorandum enclosed. The balance of the receipts was absorbed by dealers, with the exception of 6 to 700 packages secured by Henderson. As wired you this morning, I have been positively assured that the S. S. Evelyn, of 1963 gross American tons, has been chartered by parties here to load sugars for New York. The only opinion I can surmise is, that the Godchaux-Barkley-Adler combination have given out that they will resist to the utmost the effort on our part to purchase 96 test sugars on this market at 3/8. They claim that they can realize 3½ by shipping to New York, and if the statement that a steamer has been character at 12c. is correct, as rumored, it virtually substantiates their statement.

"The receipts so far this season amount to 8600 tons, out of which we have secured less than 15% as against almost 30% last year. This has been due principally to the fact that dealers have been buying freely, and have already commenced to store their surplus purchases over and above what they are shipping to the country. Aside from this, considerable money has been engaged here from local bans*k* to speculate in sugars during the coming season, and it begins to look as if our percentage of purchases this year will be considerably reduced. Already several planters have withdrawn their sugars from sale on the exchange, and as fast — the different shipments arrive here they have been ordered to warehouse.

"We have discontinued melting at this plant, having melted all (This line is illegible) be completed so as to enable us to resume melting again by November 10th. If the heavy purchases by outsiders continue, I hardly think we will be able to secure sufficient sugars to commence melting by the 10th on the 3/8 basis. If it is desired that we resume melting as early as possible, it will be necessary for you to authorize me the same as last year; namely, to secure supplies sufficient to melt and run interruptedly at the best price possible, and after accumulating a small surplus, then commence bearing the market down to the usual figures under the New York value.

61 "Last year the rate by the steamer was 20c. per 100 pounds, which enabled us to buy all of our supplies from this figure to ¼ under the New York value. If, however, operators can charter a steamship at 12c. this will enable them to ship sugars to New York, say to Arbuckle or Howell, and obtain a better value than they can here.

"These are the conditions existing here today, and I submit them to you for your information.

"Yours truly,

"J. T. WITHERSPOON."

XXIV.

The power and inclination of complainant, through its monopoly, to fix the price of raw sugar, at pleasure, in Louisiana, and the frauds, damage and injury perpetrated by complainant in the exercise of that power upon the producers of raw sugar in Louisiana, are show- in another of said letters, which was written, sent and received, according to the tenor thereof, same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, towit:

"Jan. 5/06.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: Receipt of plantation sugars today were 12,118 Bbls. & 16,363 Bags, out of which we bought on the exchange—340 bbls. and 924 Bags, as per memorandum enclosed. In addition to this, we received, consigned account of past contracts, 1059 Bbls. and 13,862 Bags.

"The Henderson Refinery bought on the Exchange 351 Bbls. & 28 bags and received account of past contracts 956 bags. 4506 Bbls. & 485 bags were stored, while the balance was taken by dealers at 3 11/16—3 3/4 and 3 25/32, the bulk of the sales being at the last two named prices. We received your telegram this morning that Arbuckle had paid yesterday 3¾ for 96 test. However, upon receipt of your telegram of yesterday, stating that the New York quotation for 96 was 3⅝, we settled our yesterday's contract arrivals on this basis. Today, however, based on the 3¾ sales, the probabilities are, we will have to settle on this basis, but we will await your official telegr[illegible] making any settlements.

"Monday being the 8th of January, the anniversary of the Battle of New Orleans, this day is a legal holiday in the State, and it is probable that the Sugar Exchange will not open for business; hence, all sugars arriving Monday, under our contract, will take Tuesday's price. I anticipate that contracts arrivals next week,—especially on Tuesday, will be very heavy; therefore, if we have to settle on the basis of 3¾ New York for 96, the amount involved will be considerable. The idea has occurred to me that you might take a few thousand bags of your sugars in New York and sell them to Howell, or some of the other refiners, on Monday, on the basis of 3⅝ for 96, thereby establishing this quotation, and enable us to sell Tuesday's arrivals on this basis. This, however, is simply a suggestion and is passed up to you for consideration.

"Yours truly,

"J. T. WITHERSPOON."

62 XXIV-A.

The agitation throughout the country against the exactions of complainant's monopoly became so strong, in Congress, and in the press, and elsewhere, that complainant found it necessary to disguise the amount of its illegitimate profits in the manipulation of the sugar markets, and, to this end, it became the recognized and settled policy of complainant to take its principal profit by lowering the price of raw sugar instead of by raising the price of its refined sugar; this being done because the consumers of refined sugar were numerous, while the producers of raw sugar were few, all of which appears by a letter from W. B. Thomas, then Vice President, and afterwards President, of complainant corporation, to H. O. Havemeyer, then its President, which letter was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant has exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy thereof being as follows, to-wit:

"The American Sugar Refining Co.

"BOSTON, Dec. 23, 1903.

"H. O. Havemeyer, Esq., 117 Wall St., New York.

"DEAR MR. HAVEMEYER: Our mutual friend of the Revere Refinery has been in to see me today, and told me of his interview with Mr. Arbuckle. The latter expressed a desire to see me (at least so Mr. Reed states), and also extended an invitation for me to lunch with him and go over his refinery. Of course the latter I should not do. I, however, think it would be a good plan for me to see him. I am convinced that he controls the situation irrespective of the person who sailed for Europe the other day. If some plan which would not violate the law could be adopted for our mutual benefit, I should judge from what Mr. Reed states that Mr. Arbuckle would be very glad to co-operate.

"I told Mr. Reed there is one other aspect of this matter, and that is the influence on the raw market. The American Sugar Refining Co. has no doubt enabled its competitors to buy their raw sugars cheaper than they could have without its assistance, and something is owed to us in the way of co-operation on the part of our competitors to assist in getting our raw supplies as cheaply as possible. Mr. Reed seemed to think that if any definite plan in regard to this aspect of the question was adopted Mr. Arbuckle is in a frame of mind to come in. The difficulty is to present some legal and definite plan. It does seem that our legal talent might discover some way in which the difficulties of a legal nature might be overcome. I think very likely I shall see Mr. Arbuckle next Tuesday, although I shall know definitely later.

"Very truly yours,

"W. B. THOMAS."

"P. S.—In regard to the raw sugar end of the business, what we — after of course ultimately is the margin between raw and refined. It arouses much less opposition and occasions much less talk if the price on raw sugars is depressed, than if the price of refined is advanced, and if we can secure a reasonable profit through this method it is better than getting it out of the advance in refined sugars. You understand, of course, in seeing any of these people, I neither commit myself or the Company to anything whatever. It is merely to establish as it were, diplomatic relations, in the hope that out of the more or less confused condition of trade which exists at present, a more orderly and less irregular business at a reasonable rate of profit can be established for the next few months."

63 XXV.

The complainant, in addition to its other schemes and advantages for controlling the aforesaid Louisiana trade, was in the habit of paying secret bonuses to certain large producers and sellers in said market, for their raw sugar, and of thereafter forcing down the price of raw sugar to levels which said large producers would have resisted, as shown in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of the first of said letters being as follows:

"Nov. 3, 1902.

"Mr. H. C. Mott, #117 Wall St., New York.

"DEAR SIR: I now know for a fact that the S. S. "Evelyn" was charter by Barkley, Godchaux, etc., to load with sugar sold Arbuckle, at 3 5/8 delivered in New York, New Orleans weights and tests to prevail. The rate of freight is 12c. per hundred pounds; the capacity of the steamer about 18,000 Bags. This sugar will be barged from different plantations to New Orleans by chartering barges. The ordinary way is to ship by rail at 10c. per 100, or 7½c. per 100 pounds, according to the plantation shipped from. The barge rate will be 8 and 5c. respectively, and as the barge will be towed direct to the steamer, there will be no terminal charges here. I figure that insurance will be 1c. per 100, which with 12c. freight will make the cost of delivery in New York 13c. per 100 lbs. Deduct from this 2c. saved in barging to New Orleans will make the net freight to New York 11c per hundred; deduct this from the 3 5/8 basis sold at to Arbuckle will net these parties 3.51½.

"The parties to this transaction are close mouthed, and will give out no information, but I have it from a most reliable source that the facts as stated above are correct. Furthermore, they are endeavoring to charter several more steamers to load with sugars for Arbuckle, based on firm offers of 3 5/8 delivered in New York.

"In former years, we have been able at this early date to buy grocery grades for melting purposes, but so far, everything of this

character has been taken up by dealers, and to-day speculators are buying and storing. Instead of confining themselves strictly to grocery grades, they are taking in off grades of Yellows, which have heretofore been classed as refining grades only. This will give you an idea as to the bullish feeling existing here, and inasmuch as we hope to commence melting here again on next Monday, I am afraid that unless our limits are increased this can not be accomplished, from the fact that we will be unable to secure sugars sufficient to run.

"In connection with sales to Arbuckles the parties concerned are the most active and wide-awake operators here; they leave no stone unturned to squeeze out every cent they possibly can. They are looked up to by the other brokers, and if they once commence shipping to New York, it will have a bad effect on our buying on the Exchange, in that others will Follow.

"Godchaux and Barkley have been willing all along to sell us their sugars at 3½, and even now, I feel that I can buy them off at this figure. In view of the fact that they can net this 64 amount from Arbuckle, a preference is all that we can expect.

"My idea is, to get these parties out of the way by buying their offerings, tie them up to absolute secrecy, and then operate on the Exchange at a full ¼ under New York until conditions prevent it.

"I have submitted the above facts to you by wire to-day.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters is as follows:

"Dec. 5/1902.

"Mr. H. C. Mott, # 117 Wall St., New York.

"Dear Sir: It developed here to-day that Godchaux and other speculators were endeavoring to buy refining grades of sugars, and some of them bid 3 13/16 basis 96 test, delivered here. In one instance this was bid on a batch of 10,000 Bags, and even at this the seller appeared indifferent. Godchaux's move I consider to be an effort on his part to make us pay him a high price for his sugars. He still has between 75 and 100,000 Bags to make, but he has not yet decided whether he will turn them into refining grades or grocery grades.

"Speculators as a rule seem to think that 4c. for 96 test will prevail in New York the latter part of January and February, and if they can buy refining grades now, the delivery of which is to be strung out for 30 days, that they in turn will sell these sugars to us or Henderson at the full New York basis.

"Godchaux is not only now, but has been throughout this campaign, a menace to us in buying sugars, and I have about come to the conclusion that it would be policy for us to pay him an outside price, sayd 3⅞ for 96 test, for the balance of his production, delivery to be made as rapidly as produced on his different plantations, and in doing this, he would have to agree that he would refrain entirely from speculating on refining grades. I informed him

that his proposition of 1/16 under the New York price had been declined; this has disgruntled him. I believe that he will accept 3⅞ flat, although he states that if he makes refining grades, it is his intention to hold the sugars on plantation or in public warehouses here until such time as we will be willing to pay the full New York price.

"In buying sugars on a sliding scale under New York price, you are laboring under a misapprehension, in that, such purchasers give the seller the privilege of delivering the sugars as he sees fit. Such is not the case. Our contracts specially stipulate: (and we watch each to see that the requirements are fulfilled) that shipments are to be made as rapidly as the sugars are produced from day to day on plantation. This is generally carried out, except in extreme cases where the railroad cannot furnish cars; but as the car congestion here is being somewhat relieved, this difficulty is rapidly disappearing.

"To repeat: I believe that Godchaux's sugars can be bought on either one of the following bases:

"1st. A flat price of 3⅞ for 96 test, this price to prevail regardless of the future course of the market. The sugars to be shipped as produced each day on plantation.

"2nd. On a sliding scale of 1/16 under the prevailing New York price the day of arrival of the shipments in New Orleans. Shipments to be made from plantation each day as sugars are produced, or as soon thereafter as cars can be secured.

"Should you decide to accept either one of these propositions, please wire me on Monday. As some of Godchaux's plantations will run until about January 15th, the delivery of this contract would be strung out until the latter part of January, but at least one-half of his plantations will be through grinding by January 1st.

65 "We were offered to-day two contracts aggregating about 20,000 Bags on a sliding scale of ⅛ under the New York price day of arrival in New Orleans. Should you decide to entertain the sliding scale basis, we can probably close these two contracts also on Monday, and will see that the sugar is shipped promptly from plantation as produced. You need entertain no fear that the seller will have the privilege of holding his production back until such time as he thinks the market will be absolutely in his favor. The sugars must be shipped to us as fast as made.

"Yours truly,

"J. T. WITHERSPOON."

XXVI.

The nearest refineries to New Orleans, which are capable of competition with complainant, are at Philadelphia and New York; and if raw sugar in quantity, is not sold in New Orleans it must be carried to those cities for a market. The amount of the freight rate is an important factor in enabling complainant to fix its aforesaid arbitrary sliding differential for the price of raw sugar in New Orleans under the price thereof in New York, and complainant has utilized

its power over the common carriers running out of New Orleans to keep the freight rate high, in order that the aforesaid differential may be correspondingly high, as shown in another of said letters, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of said letter being as follows:

"Dec. 14/1901.

"Mr. H. C. Mott, # 117 Wall St., New York.

"DEAR SIR: Referring to the raw sugars bought by Arbuckle, I am going to put you to a little trouble. At the beginning of the season, I had a conference with the Morgan Line people, and arrived at a tacit understanding that the rate of 20c. per hundred pounds to New York, together with lighterage of 3c. in the New York harbor—would not be cut for any one. Insurance being 1/5 of 1% would amount to another 1c. per hundred pounds, thus making the through rate to New York 24c.

"With this understanding, I naturally concluded that the situation here was well in our hands, and so long as the New York market remained at ¾ we would experience no trouble in buying at 3½. Unfortunately Arbuckle stepped in and paid 3 9/16 for 96 test, agreeing to accept New Orleans tests and weights.

"If the Southern Pacific held to their tacit understanding and did not cut the rate 3 9/16 New Orleans plus 24c. would make this sugar cost Arbuckle 3.80 for 96 in New York. In the light of this I am inclined to think that we have been betrayed, and that some manipulation has taken place in the rates of freight from this end, and I am further inclined to believe that the lighterage has been absorbed.

"Now, if you can, will you not please see what has been
66 done in this matter and let me know, for future ideas.

"Yours truly,

"J. T. WITHERSPOON."

XXVII.

There was a grade of plantation sugar which was called Granulated, and which went directly into consumption, without being refined. This grade of sugar competed with complainant's refined sugar; and it was a common practice of complainant to utilize its aforesaid monopoly for making systematic reductions in the price of said plantation granulated sugar, whenever same came upon the market, for the purpose of checking the growth of the manufacture of said granulated sugar as shown in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy of the first of said letters reading as follows, to-wit:

"Oct. 28, 1908.

"Mr. W. B. Thomas, Pres'd't The American Sugar Refg. Co., New York, N. Y.

"MY DEAR MR. THOMAS: I want to bring to your attention the competition in the way of Refined Sugars that we will have in New Orleans, during the coming winter.

"Outside Refineries.

"The Henderson Refinery located in New Orleans, during the time that Louisiana Sugars are used, will produce about
"900 Barrels per day.

"The Cogswell Refinery, with a capacity of—
"200 Barrels per day

has been closed for the past year, and is expected to remain closed this year.

"There is some talk that Wogan Bros.—who own a dilapidated place,—will try to refine about—
"300 barrels per day.

"Outside of New Orleans, there is the 'Gramercy' Refinery which in addition to refining the Sugars produced by them, have already commenced buying Raw Sugars on this market, and, I understand, will continue to buy from 5/600 barrels per day until the grinding of sugar is over. This should give them a refined output of Granulated of—
"1,000 to 1,200 Barrels per day.

"The 'Cunningham Refinery,' in Sugarlands, Texas, does not refine foreign Sugars, having closed down since the grinding of cane was over, this year, and will market it to the extent of Raw Sugars manufactured by them. They produce from:—600 to 700 Barrels per day.

"In addition to the above, I am afraid we are going to have some competition from the ordinary plantations turning out Gran-
67 ulated Sugar. Many years ago there were at least six or seven of these plantations producing Granulated Sugar, which while considerably off, in color, from the Standard, nevertheless, the trade readily absorbed it, at from ⅛th to 3/16th under the price of Standard. As time passed many of these plantations came to the conclusion that it did not pay them to granulate their product, and, eventually, all of them either reverted to making Raw Sugars, or to making the ordinary Grocery Clarified. This year, however, I learn that two of them,—and possibly three—are going back to making Granulated, namely:—the 'Sport' and the 'Adeline' Plantations—the latter owned by the Oxnards. This additional output will approximate about—
"1,000 Barrels per day,

so that considering the output of the different outside Refineries, in New Orleans, together with 'Gramercy' and Sugarlands, the prob-

abilities are, there will be produced, during the coming season, approximately—

"3,400 to 3,700 Barrels

with which we will have to contend.

"What I, particularly, desire to call your attention to, is that the higher we hold our prices, for Granulated Sugar here, during the next three months, naturally, the more profit these plantations will make on their product, and if the information once gets abroad that it is more profitable for the different plantations to produce Granulated Sugar, than to turn out Raws or Clarified, I am afraid next season many others will commence doing likewise; consequently, it might be well for you to consider the proposition of permitting New Orleans, during the next three months, to maintain a difference in price below New York of at least ten cents, and at periods of extreme dullness, when these outsiders here are quoting low prices and selling their product,—of even twenty cents, per hundred pounds.

"What I am particularly interested in, in seeing the little outside competition develop as little as possible.

"Yours very truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters, written by H. O. Havemeyer, President of the complainant corporation, to G. S. Eastwick, then complainant's manager in Louisiana, reads as follows:

"June 2nd, 1896.

"Mr. Geo. S. Eastwick, New Orleans, La.

"DEAR SIR: I have your communication of May 30th, bearing upon raw sugar supplies and importation of foreign beet refined sugars.

"As stated to you when here, it is always desirable to sell your product where it will meet the competition of the New Orleans and Texas refiners, and there it will meet the competition of foreign refined beet. I think before Messrs. Levy and Cannon and Hawley have marketed their granulated the loss incident to a drop of half a cent a pound in the market price will be a pretty serious lesson to them.

"Yours truly,

"H. O. HAVEMEYER."

XX-III.

The complainant's refinery at New York was originally owned and operated by Havemeyer & Elder, and that at Philadelphia, by the Franklin Sugar Refining Company, and, under the
68 brands of "H & E." and "Franklin," respectively, the sugar refined and sold by complainant in those cities gained great vogue and popularity. The sugars refined and sold by complainant in its Louisiana refineries had no such vogue or popularity, and it was a common practice of complainant to misbrand the sugar

from its Louisiana refineries, and to send same out with the "H. & E." and "Franklin" brands, thereby deceiving and defrauding the general public, as a number of letters, from among those referred to above, will show; those following having been written, sent, received and acted upon according to the tenor thereof, and being typical illustrations of the manner in which complainant has exercised its monopoly in Louisiana, but not being indications of the future course and conduct of complainant, as defendants have no reason to believe that said practice is being indulged in at present; a true and correct copy of the first of said letters reading as follows, to-wit:

"Dec. 19/05.

"H. O. Havemeyer, Esq., Pres't The American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: Mr. Mott's telegram today, intimating that you would probably require us to ship considerable raw sugars from here to New York next month, prompts me to make the following suggestion for your consideration.

"We are having little or no demand here for Refined Sugars at the present time. The reason for this is obvious, and as we consider Mr. Mott's telegram to mean that you might be short of raw sugars in New York, which to ship from New Orleans to New York would mean at least 15 to 17c. per 100 pounds, the idea has occurred to me that we could supply from New Orleans all the Refined Sugars which you require, in barrels or straight 100 pound bags, during the month of January to points in Ohio, Indiana, Michigan and possibly Buffalo, N. Y.

"To a great many of these points the New Orleans rate of freight ranges from 3 to not over 7c. per 100 pounds higher than the New York rate; while to Detroit the N. Y. rate we understand is 16c. as against our rate of 28.

"To Cleveland the N. Y. rate is 15c. as against our rate of 28c.

"To Buffalo the N. Y. rate is 16c. as against our rate of 31c.

"Mr. Parker can undoubtedly furnish you the difference between the two rates to all points in these states. These shipments could be branded H. & E. and consigned to order of The American S. R. Co., N. Y., and be disposed of by the N. Y. office as Eastern sugars. This would not only relieve us of such Refined as we will undoubtedly accumulate in January, but at the same time supply any shortage that may temporarily exist in N. Y. This suggestion was made to Mr. Osborn some time ago.

"Yours truly,

"J. T. WITHERSPOON."

69 A true and correct copy of the second of said letters reads as follows:

"Dec. 23/05.

"Mr. W. W. Frazier, Jr., Franklin S. R. Co., Philadelphia, Pa.

"MY DEAR MR. FRAZIER: We are today informed that the barge will be here ready to load for Pittsburg on next Tuesday morning.

We expect to load about 4000 Bbls. of Sugar to be branded with the Franklin brand. Inasmuch as we are charging all of our shipments to you, we thought it probable that you would like to have this shipment charged to you also. If so, kindly wire us on Tuesday. Otherwise, if you prefer it, we can ship these sugars simply as a consignment, you to dispose of same for our account and account to us monthly. We will insure this barge ourselves. Of course if you desire to treat this as a consignment, you will be privileged to charge us for whatever expense there may be incurred in selling.

"Wishing you the compliments of the season, I am

"Yours very truly,

"J. T. WITHERSPOON."

A true and correct copy of the third of said letters reads as follows, to-wit.

"January 8/06.

"Mr. W. F. Osborn, #117 Wall St., New York.

"My Dear Osborn: We are in receipt of yours of the 6th. It was most unfortunate that the #25 bags under the New Orleans brand were shipped to Ohio. The circumstances were, however, at the time we received these orders, we were entirely out of the H. & E. brand, and it was a question either to delay the orders indefinitely or ship under the New Orleans brand. I do not think you will have any trouble in disposing of this sugar. All you have to do is to get the parties to extract some of the sugar from the bags and compare it with the H. & E. sugar. You will find that it compares most favorably.

"To avoid further trouble of this kind, however, our sales office has been instructed, whenever they run out of the H. & E. brand in the future, to ship the New Orleans brand only to those points to which we have heretofore shipped our sugars, and under no circumstances to ship to any other points—but to wire you for instructions.

"Yours very truly,

"J. T. WITHERSPOON."

A true and correct copy of the fourth of said letters reads as follows, to-wit:

"May 25/06.

"Mr. W. W. Frazier, Jr., Franklin Sugar Refg. Co., Philadelphia, Pa.

"My Dear Mr. Frazier: Inasmuch as Mr. Havemeyer has ruled that shipments made from here for account of the New York office should bear the H. & E. brand whenever requested, it is only proper that any of your shipments whereon you desire the Franklin brand to be used, you should be accorded the same privilege; hence our sales office will be instructed, wherever you desire the Franklin brand, it will be used. Mr. Osborn has raised the point that
70 our using the H. & E. brand on some shipments for your account was without authority and we had no right to do this. Therefore, if you desire the H. & E. brand on any of your bags and

if you can get Mr. Havemeyer's authority for us to use it, we will cheerfully comply.

"Yours very truly,

"J. T. WITHERSPOON."

XXIX.

Complainant's monopoly was and is so extensive that it was enabled thereby, and it did, dictate to the brokers in the trade what sugar they should handle; brokers being generally unable to continue in business if they lost complainant's custom. This control over the brokers was made use of by complainant for excluding the Louisiana plantation granulated sugar from the regular channels of distribution to the irreparable loss of the producers of sugar in Louisiana, and to a most injurious curtailment of the trade therein in Louisiana, as exhibited by two of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy of the first of said letters reading as follows, to-wit:

"Nov. 20/08.

"Mr. Horace Havemeyer, #117 Wall St., New York.

"DEAR MR. HAVEMEYER: We are in receipt of your telegram reading as follows:

" 'Do you confine all your brokers to the sale of your product only, and not allow them to handle product of competitors or outsiders.'

"It has long been our custom here to confine not only our local New Orleans brokers, but every broker having direct connections with us, to the handling of the product of this company only. Up to the time that your father said that the*t* could handle the beet product, none of our brokers had even been allowed to handle beets. Since then, they have been permitted to handle beets, and this is the only exception. I have already written both you and Mr. Thomas how Lamborn was put on trial for a year, and it has been discovered that his connection with outside interests here works greatly to our disadvantage, which I have also laid before you and Mr. Thomas.

"Upon receiving your letter of Nov. 10th, in which you write that both you and Mr. Thomas think it better to leave this matter to my discretion, and that you are personally in favor of my plan, I waited fully a week, expecting that Lamborn of his own accord would relinquish the outside interests, but as they failed to do so, I called Mr. Hutchings in this morning, and upon being told that his instructions were to continue handling the outside interests, it was than I informed him he could no longer handle our product.

71 "There may be isolated instances where some brokers at distant points handle the product of our competitors, but when cases of this kind are called to our attention, they are either compelled to give up the outside interest, or we give them up. This same policy extends, as far as we can regulate it to the foreign broker having

connections with the New Orleans brokers, the idea being, as the foreign broker receives only 5c. per Bbl., on sales made through the New Orleans broker, where *has* has direct connections with say, Henderson, on sales made for Henderson he received the full 10c., consequently there is every incentive for him to push the Henderson sugars and only devote his efforts to selling the American sugars when Henderson happens to be out of the market.

"I must confess that up to Oct. 1st, Lamborn has been given every show possible to demonstrate his ability to sell sugars from this end, but in view of certain actions which have occurred since Oct. 1st, I am thoroughly disgusted with the entire outfit, and so far as I am concerned, do not care to have anything more to do with them, so long as their usefulness has ceased. The recent advance of ten points, when they sold only a few hundred barrels of sugar for us was 'the straw that broke the camel's back', and to me clearly indicates the tendency of their efforts. The enclosed circular is a sample of what this section of the country is being flooded with. This refers to plantation Granulated made by Oxnard and sold by Lamborn.

"In using the word competitors or outsiders, I mean Refined Sugars or Plantation Granulated. We do not require of our brokers that they shall not handle Clarified Sugars produced on the different plantations. These grades do not compete with Refined to any extent, except to the confectioners or manufacturers.

"Yours very truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters reads as follows, to-wit:

"Oct. 30, 1908.

"Mr. W. B. Thomas, Pres't The American Sugar Refg. Co., New York, N. Y.

"DEAR SIR: While in New York, you will probably recall, I discussed with you the possibility, that, this season we should exact that all local New Orleans brokers should handle the American's products only, and that if anyone insisted on handling Refined Sugars otherwise—then they could not handle our product.

"This rule has always applied to any broker here, except the A. H. Lamborn Co. local office. Last year Lamborn handled the 'Colonial' Sugars as well as ours, and they were undoubtedly instrumental in aiding these people to place considerable of their product.

"I wrote you recently that the Oxnards (ow-ing the 'Adeline' plantation) contemplated producing Granulated Sugar, and I now hear that Lamborn proposes to handle their output also.

"My experience has been, that where a broker quoting a product of an old established concern, at a certain figure, and also quoting some other concern's Sugars, at a lesser figure, tends to draw attention of the buyer to the lower quotations, and as it is human nature for a buyer to attempt to buy Sugars as cheaply as possible:—it is only natural for such buyer to be attracted by the lower quotation, and in

this way, Oxnard and others would, undoubtedly market their product with considerable more ease than they otherwise would, if compelled to market it without the assistance of brokers having direct connections with us. As you raised no objection to this point, at the time, I have today notified A. H. Lamborn & Co.'s local office, that if they hereafter expected the privilege of selling our product, they must be placed on the same level as other local brokers—to the effect
that they must handle our products exclusively, and if they
72 insisted on handling the product of outsiders, then they could not handle ours.

"To my mind it is preposterous, that where through facilities accorded by this Company, brokers have established extensive connections throughout the country, to permit such brokers to use the facilities for the advancement of interests otherwise than the one which was, primarily, the cause of their existence.

"I shall rigidly enforce the rule unless otherwise instructed by you, and in this respect, I sincerely hope that you will uphold our stand.

"Yours truly,

"J. T. WITHERSPOON."

XXX.

In recognition of the uncleanness of its hands, complainant has been afraid to go into the courts of the country, for fear of being called to account, by ordinary private defendants, for its immoral exercise of its monopoly, and particularly for a conspiracy with Arbuckle Brothers, large refiners in New York, who, with complainant was and is, interested in buying raw sugar at low prices and in selling refined sugar at high prices, as exhibited in another of said letters, from John E. Parsons, General Counsel of complainant corporation, to H. O. Havemeyer, its President, which was written, sent, received and acted upon, according to the tenor thereof; same being a typical illustration of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, and a true and correct copy of which is as follows, to-wit:

"NEW YORK, December 15, 1905.

"H. O. Havemeyer, President, 117 Wall Street.

"DEAR SIR: The Company has been trying to collect a claim against the Weakley & Worman Company in Ohio. It was thought that if a suit were brought, that might force the Company to pay, and a suit was brought accordingly. They retaliate by either a defense or a threat that if the matter is pressed, they will go into the question of rebates, any arrangement with the Arbuckles, etc. I have not thought that this was desirable; in fact have thought that, rather than have all of the trouble, with the other objections, it would be better to discontinue the suit, unless the Company will settle, even if we have to pay costs. Mr. Osborne, however, tells me that the suit was commenced under your instructions. Before giving any

positive direction about the matter, therefore, kindly let me know what may be your wishes.

"Yours truly,

(Signed) "JNO. E. PARSONS."

XXXI.

73 Complainant has sought to fasten its monopoly on the people of Louisiana by secretly conspiring with individuals in the State against the passage of wholesome anti-trust laws, and against the election of officials independent of its influence, and has thereby sought to do illegitimately and fraudulently and corruptly what it is seeking in this proceeding to do,—to continue to do business in Louisiana unchecked by regulation or law, as exhibited in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct — of the first of said letters being as follows, to-wit:

"June 25/1902.

"H. O. Havemeyer, Esq., Pres't The American S. R. Co., #117 Wall St., N. Y.

"DEAR SIR: I enclose you draft of the Anti-Trust Bill which has been introduced into our State Legislature. A strong effort is being made here by the Standard Oil Co., the Tobacco Co. and others, to defeat this Bill, and while I have taken no active part on behalf of the company, still in a quiet way, we are doing all we can to help them.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters reads as follows, to-wit:

"The American Sugar Refining Co.

"NEW ORLEANS, LA., April 5/94.

"Personal.

"Mr. H. O. Havemeyer, New York.

"DEAR SIR: Southern Whol. Gro. Ass'n. I am in receipt today of yours of the 2nd and 3rd inst. The Southern Wholesale Grocers Association met here, today, and will be in session until the 7th. I have suggested a form of resolution similar to the one adopted by the Philadelphia Board of Trade, which will be duly considered, and I think adopted by them.

"Missouri River Markets. I note what Mr. Oxnard writes in regard to Missouri River points, and in reply, would say that we have not been offering any sugars to the Missouri River Markets without first advising with them to know whether they could give us these

Markets. Our Brokers for years at Kansas City have been Messrs. Greenlees, Russell & Co. We will conform to your views, and not offer this territory until advised by San Francisco that we can do so.

"Political. I note what you write in regard to Mr. Caffery,
74 and as advised in my personal letter to you of April 4th—will make every effort possible to bring about the desired result. Any candidate to be elected will require certain funds in order to carry his election through. Mr. Hutchinson has mentioned to me, in a confidential way, that Caffery's people have applied to them (the So. Pac. Co.) for a subscription, which he tells me he has refused. As it is possible, however, that they might change their minds later on and be willing to donate something, I have thought it well to advise you of this fact, so that in case you could see your way clear at any time, to open up the subject with Mr. Huntington in New York, we could act together. I know that both Mr. Huntington and Mr. Hutchinson are very favorable to Mr. Blanchard. I also know that personally, Mr. Hutchinson is not unfriendly to Caffery, however, he has never hesitated to express himself to me confidentially as to Caffery's being a man very much inferior to either White or Blanchard. He was the local attorney at one time of the So. Pac. Co. in St. Mary's Parish La., and handled their cases,—and as Mr. Hutchinson expresses it to me: 'he is a man of so little policy that he has at times gotten into a fight with the Judge in Court, handling a case for them.' I give you these facts simply for your private information, in case you have an opportunity at any time to take the matter up with Mr. Huntington, and would add that as Mr. Hutchinson here is rather touchy on the subject of New York interference, it would be well if Mr. Huntington can be prevailed upon to interest himself in this matter and cooperate with us—to have it come simply in the way of a suggestion to Mr. Hutchinson as originating in New York.

"My only fear is that owing to the fact that there are hardly any available candidates at present in the field, if we defeat Caffery and put in another man we may be swopping the devil for the witch. I have racked my brains to get hold of an available man, and the only one I can think of is Mr. Theodore Wilkinson, who is at present Collector of the Port, Chairman of the Democratic State Committee, who has been a member of Congress, is a Sugar Planter—and is the only man, if he can be prevailed upon to run—that we could safely substitute for Caffery. The difficulty is that he is somewhat friendly to Caffery, and would only be available as a sort of compromise candidate in case a deadlock were brought about in the Legislature between the different Factions in the State.

"There is no question in my mind that with what influence the Southern Pacific Company and ourselves would have, we could bring about the election of Caffery and Blanchard. The question has therefore suggested itself to my mind; if Caffery could be prevailed upon to change his feelings towards us, if it would not be in the end safer to support him and Mr. Blanchard, pledging them to look after the interests of both the planters and the refiners, and act in harmony with their views—than to try and put in new and un-

tried men, whose actions might be uncertain, and who would be called upon immediately to vote upon the Bill in the Senate.

"I shall be very glad to have your views more fully in regard to this matter; in the meantime will proceed steadily on the lines advised in my personal letter to you of April 4th.

"Yours truly,

"GEO. S. EASTWICK."

"P. S.—For your information, I would add that the Legislature meets here on the 14th of May, and their first business will be the election of the two U. S. Senators to succeed Caffery and Blanchard, who are appointees of the Governor. The two Senators elected will take their seats at once in Washington.

"G. S. E."

XXXII.

Among those in Louisiana who endeavored to assist the sugar planters in Louisiana to establish a co-operative refinery of
75 their own were Wogan Bros., a firm of dealers in sugar and molasses. To punish said firm for encouraging such proposed competition, and to avert any danger of such competition being established, complainant extirpated said Wogan Bros. from the sugar trade, in the manner exhibited in the following letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy of the first of said letters being as follows:

"April 5, 1904.

"H. O. Havemeyer, Esq., Pres't The American S. R. Co., 117 Wall St., N. Y.

"DEAR SIR: For several years past Wogan Bros., of this city, dealers, mixers and refiners of Molasses, have been endeavoring to promote a sugar refinery. While they have not met with success heretofor, I understand that they have succeeded in securing liberal subscriptions for their plan this year, and that the organization may be accomplished within the near future. I will advise you from time to time when I hear anything further.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the second of said letters is as follows, to-wit:

"May 19, 1904.

"H. O. Havemeyer, Esq., Pres't The American S. R. Co., #117 Wall St., N. Y.

"DEAR SIR: Some time ago I advised you that Wogan Bros. of this city were endeavoring to organize a refinery. From what I can learn

they have not met with much success locally, but it is rumored that Mr. Jno. A. Wogan is now in New York, endeavoring to interest Eastern capitalists in the enterprise.

"I understand he is quite a good friend of Mr. M. R. Spellman, President of the Colonial Sugar Co., and it may be that any missionary work may be done through the firm of H. W. Poor & Co., New York.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the third of said letters is as follows, to-wit:

"June 1, 1905.

"H. O. Havemeyer, Esq., Pres't The American Sugar Refg. Co., #117 Wall St., N. Y.

"DEAR SIR: Wogan Bros., of this city, are engaged in the mixing and canning of Syrups and Molasses. During the past winter they put up an old granulator, which has been installed in their 76 molasses plant, and which they have been using for some weeks past granulating the better grades of Plantation Sugars, and selling them from ten to fifteen points under our price. They also buy Standard Granulated of us in a limited way, which they use in shipping mixed cars of Molasses and Sugars. Several Texas buyers also instruct us to deliver sugars to Wogan Bros. for their A/c, to be shipped in mixed cars. The output of this granulator is only about 100 bbls. per day.

"The idea has occurred to us that it might be well for us not only to discontinue selling Wogan Bros. on the ground that they are competitors, but also to refuse to deliver them any of our sugars for A/c of Texas customers. Before doing anything, however, we would like to have your instructions.

"Yours truly,

"J. T. WITHERSPOON."

A true and correct copy of the fourth of said letters is as follows, to-wit:

"May 7/07.

"Mr. Horace Havemeyer, #117 Wall St., New York.

"DEAR SIR: Another reason we do not care to sell Hobart is that some time ago, I reported to Mr. H. O. Havemeyer that Wogan Bros., of this City, were turning out 150 to 200 bbls. Granulated Sugar a day, and although it was off-grade, they found a market for it at about 20 points under our price. Wogan Bros. have heretofore bought sugars of us, but Mr. Havemeyer instructed me to discontinue selling them, which we have done. Since then they have resorted to all manner of means to secure our sugars and have tried to induce almost every grocery house in the City to buy through them, but so far they have not met with success. Since writing you this morning, I am satisfied from inquiries made, Wogan is trying to induce Hobart to get him our sugars, consequently, under the

circumstances, I think you had better let us handle this matter from this end, and not sell Hobart any sugars in New York to be delivered from New Orleans. Don't mention anything of this Wogan matter to Hobart, but tell him he had better deal with us direct.

"Yours very truly,

"J. T. WITHERSPOON."

A true and correct copy of the fifth of said letters is as follows, to-wit:

"Wogan Brothers.

"NEW ORLEANS, June 10th, 1907.

"5 P. M.

"The Amerc. Sugar Ref'g Co., City.

"DEAR SIRS: Please enter us for 100 sacks of American Standard Sugar and let us know when we can call for same.

"Awaiting your prompt reply, we remain,

"Yours truly,

"WOGAN BROS."

"J. M. W./J. L."

"Rec'd June 11/07-11:55 A. M. & personally declined to enter order to messenger bringing letter—told messenger to tell either Wogan would not sell them until satisfactory assurances to complying with terms & filing of statement.

"June 10/07."

"J. T. W."

"Also told messenger to tell either Wogan would not hereafter answer any letter.

"J. T. W."

77 A true and correct copy of the sixth of said letters is as follows, to-wit:

"NEW ORLEANS, LA., June 13th, 1907.

"Mr. J. T. Witherspoon, Manager American Sugar Refining Company, No. 132 N. Peters Street, City.

"DEAR SIR: I enclose a letter of the 12th. inst. of Wogan Bros. to you, with their check for $485 (for 100 sacks of Standard Granulated Sugar); which letter and check you refused to receive from the clerk of Wogan Bros.

"Please give the matter your attention and oblige.

"Yours respectfully,

"CHAS. J. THEARD,
"Att'y for Wogan Bros."

A true and correct copy of the seventh of said letters is as follows, to-wit:

"NEW ORLEANS, LA., June 13, 1907.

"Mr. Charles J. Theard, 211 Camp St., City.

"DEAR SIR: We are just in receipt of yours of the 13th. inst. As we have sold Wogan Bros. no sugars, we returned them their check, and now beg to hand you same with this letter.

"Yours truly,

"THE AMERICAN SUGAR REFG. CO.,
"J. T. WITHERSPOON, *Manager.*"

"Two enclosures."

A true and correct copy of the eighth of said letters is as follows, to-wit:

"NEW ORLEANS, LA., June 13, 1907.

"Mr. J. T. Witherspoon, Manager American Sugar Refining Co., City.

"DEAR SIR: Your letter just received, again returning letter & check of Wogan Bros.; which letter and check I re-enclose to you.

"It is better to deal frankly about this matter.

"Messrs. Wogan Bros., as you know, want the sugar and offer to pay cash for it.

"The question is simply whether you refuse to sell them.

"Respectfully,

"CHAS. J. THEARD,
"Att'y for Wogan Bros."

A true and correct copy of the ninth of said letters is as follows, to-wit:

"NEW ORLEANS, LA., June 13, 1907.

"Mr. Charles J. Theard, #211 Camp St., City.

"DEAR SIR: In answer to your second letter of even date, just received, while we are most desirous of showing you every courtesy possible, we must refer you to our letter of this forenoon. We return you the check and letter enclosed in your communication.

78 "Yours truly,

"THE AMERICAN SUGAR REFG. CO.,
(Signed) "J. T. WITHERSPOON, *Manager.*"

"(Two enclosures.)"

XXXIII.

There were refineries at St. Louis, at Philadelphia, and at Sugarlands, Texas, which stood in the way of practically complete monopoly by the complainant over the sugar market in Louisiana. The refineries at Philadelphia were absorbed by complainant, and one of them, which cost $10,000,000 of complainant's stock, was closed down. The refinery at St. Louis was absorbed by complainant, and was dismantled. The treatment the refinery at Sugarlands was subjected to is exhibited in three of the aforesaid letters, which

were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated, a true and correct copy of the first of said letters reading as follows, to-wit:

"April 9, 1914.

"H. O. Havemeyer, Esq., Pres't The American Sugar Ref'g Co., 117 Wall St., New York.,

"DEAR SIR: Referring to yours of March 30th, I beg to submit the following facts, together with enclosures on the Texas situation. This report must necessarily be a lengthy one.

"Legal. The enclosed documents marked A, give you a copy of the Anti-Trust Law of Texas, together with the opinion of our local attorneys thereon. You will notice that this law gives a certain percentage of fines collected—to the different county attorneys, which has had the effect of making them most grasping. Numerous suits have been instituted against corporations under this law, and some very heavy fines have been collected. At the present moment, there is a suit pending against one of the large oil companies with fines and penalties aggregating in the millions.

"In doing business in the state of Texas, we have been most careful in our methods and have absolutely refused to make any consignments whatsoever, or carry any stocks in that state, thereby avoiding liability to legal service from the State Courts, in case some of those erratic district attorneys should see fit to make trouble for us. The opinion of our attorneys speaks for itself, but I would suggest in addition to this that you consult Mr. Parsons. Of course,
79 if you should decide to carry consigned stocks in Texas, in that case the Texas authorities could reach you for legal service through the State Courts by attaching such consignments as you may have in Texas.

"Freights. The enclosed documents, marked B. not only give you the rates of freight from New Orleans but Sugarland also, and in order to give you a better idea of the Texas situation, I enclose a map of Texas, on which you will notice deep dark lines in lead pencil. All points within this circle are known as Texas Common Points and take a uniform rate of 44c. per 100 lbs. from New Oreans. All points to the right of this line, immediately next to Louisiana, take a less rate of freight, while the points on the left of the line, towards Mexico and New Mexico, take a differential higher rate over 44c. The rates from New Orleans and common points are uniformly 44c. while the rates from Sugarland to these same points are regulated by a railroad commission of Texas, who in fixing the rates have done so on a mileage basis. I have gotten one of our railroad friends to figure out the mileage basis from Sugarland to over 100 points in order to give you an idea of the railroad rates. This list is enclosed, on which is named the rate from New Orleans as well as from Sugarland. For freight prepaid prices we add 2c. per 100 lbs. for both barrels and bags to the 44c. rate, while to the rates above 50c. we add

3c. On the Texas list the points that are marked with a cross are those points at which a jobber is located. while the points marked with a cross and circle are the largest jobbing towns at which several jobbers are located. The points without any notation are the smaller towns to which the jobbers have directed us to ship sugars from New Orleans direct.

"Consumption. The documents enclosed, under the head of C, give you our total sales in barrels in the State of Texas during 1902 and 1903, as well as all other states that Sugarland can reach, also our sales in bags. The documents will give you a correct idea of the amount of sugar consumed at these different points, and will enable you to determine what amount of sugars it would be necessary for you to sell in order to accomplish your purpose.

"Independent refineries. The enclosed documents, Marked D, not only give you the independent refineries in this section, in operation, but those that are contemplated. As I wrote you a few days since, Wogan Bros. of this city have for several years been endeavoring to promote a refinery, but so far without success. Whether or not they will meet with success this year remains to be seen. The one in Texas, I understand is so far in embryo, and is dependent upon the coming National election. If Roosevelt, or a Republican ticket is elected, it will be erected; on the other hand, if a Democratic ticket is elected, it will not be erected.

"Sugarland Sales. For several years past, I do not believe that the Sugarland Refinery has sold during the time that they have been actually running, over 100 to 200 bbls. per day in Texas. The few sales they do make have been as a rule to the larger retail trade, or to semi jobbers in the smaller towns. We have a strong hold on the Texas trade, in some instances extreme loyalty being displayed toward us, and I think I can safely say that our sales for several years past have been over 90% of the consumption of Granulated in Texas, this too in the face of the independent sales here, together with Beets. About 8 or 10 years ago, when the Sugarland Refinery first started up, they commenced by cutting our prices. To stop this, you authorized us to maintain the New York prepaid prices to all Texas points. This we did by applying about 1000 bbls. sugar daily during a period of several months, resulting in running the Sugarland people absolutely out of Texas. They, however, continued to operate their refinery and marketed their output in the neighboring states. By observing the freight list enclosed, you will notice that Sugarland virtually enjoys a rate of freight equal to New Orleans to points in Arkansas, Missouri, Iowa, Minnesota and Nebraska, while to Indian and Oklahoma T'y and Kansas—the differential allowed them by the railroads is 5c. per 100 less than the New Orleans rates.

To Illinois points and points east of the Mississippi River
80 the Sugarland rate is considerably higher than New Orleans.

Hence, anyone at all familiar with the marketing of refined sugars would not be worried in the least by your maintaining the New York price over the entire state of Texas. The Sugarland people could ignore the State of Texas entirely and without any trouble market their entire output estimated at 600 bbls. daily in the

states mentioned. In fact, they can do this on Missouri River alone by cutting 5 to 10 points. Therefore, to be effective, you would not only have to maintain a lower level of prices in Texas, but an equally low basis to all the points enumerated above.

"Galveston. Should you decide to supply Texas from New York, it would not be feasible in my opinion for you to carry stocks in Waco, Wichita Falls, or any interior jobbing point, for the reason that all common points within the circle mentioned above take the same rate of freight that is in effect from the shipping point. To illustrate: The New Orleans common point rate is 44c. The Galveston common point rate is 33 or 36c. I do not know what the New York common point rate is. Therefore, if you carried stocks at say Fort Worth, and desired to ship 100 miles distant from Fort Worth, you would not only have to pay the New York rate to Fort Worth, but the local rate to the 100 mile point, which is 25c. additional. On the other hand, you could probably arrange with the steamer lines to carry stocks in transit at Galveston, to be shipped from there to such points as you may desire at the proportion of the through rate to common points. If you finally determine to supply Texas from New York, in my opinion it would be well for you to use Galveston as the supply point, taking into due consideration the legal complications liable to arise.

"Then again, as stated above, the Texas freights are regulated by the State Railroad Commission, who have fixed on a mileage basis. To illustrate: All points under 10 miles take a 12c. rate; between 10 and 15 miles take a 13c. rate, and so on up to 185 miles and over, when the maximum rate is 33c., all carloads.

"Freight on Cuban Shipments. As advised you yesterday, the first shipment, of 22,000 bags, was made by the S. S. "Saturinina" sailing from Havana, and that this steamer is due in Galveston today. As far as I can learn, the freight rate from Cuba to Sugarland is 18c., made up of an 8c. rate for the steamer and 10c. for the rail lines. The Sugarland people own a small railroad, as shown by the pointing of the hand on the map, that runs between Arcola and Sugarland. This road is 15 miles in length. The sugar will move out of Galveston via the I. & G. N., who will haul it to Arcola and there turn it over to the Sugarland Railway. As I understand it, the I. & G. N., proportion of the 10c. rate is 7c., while the remaining 3c. is given to the Sugarland Railway. Should you desire any further information on this matter please advise.

"I have it on good authority that the rate from Galveston to Sugarland is not absorbed by the railroads in the outward shipment of refined from Sugarland. In other words, Sugarland pays 10c. on the raw product, together with whatever rate may be in effect from Sugarland to the point of shipment.

"Yours truly,

J. T. WITHERSPOON."

"P. S.—I also enclose document market E, going to show the contracts we now have booked for the State of Texas and prices

f. o. b. New Orleans. These contracts are virtually a month's supply for Texas. To these prices 46c. is added for freight prepaid.

"Summing up this proposition as matters now stand, the Sugarland people sell very little sugar in the State of Texas proper, and if you should deprive them of those few sales, they will simply abandon the State of Texas entirely, and market their product in other states. To accomplish any results it will be necessary, therefore, not only to maintain the New York price in Texas, but also in Arkansas, Missouri, Indian and Oklahoma T'y, Kansas, Nebraska, Iowa, Minnesota and possibly the Dakotas. If, however, you should decide to maintain the New York price in Texas, and you could not secure as favorable rates from New York as those now in effect from New Orleans, instead of shipping from New York we could do so from New Orleans, thereby avoid carrying any stocks in Texas, and at the same time be in a position to have our shipments reach Texas within a few days. I notice you intimate that this refinery should not participate in any reduced rates. This could be obviated by your authorizing us to make shipments from here, we collecting the money from the buyer and in turn charging
81 your office with the difference between the price sold at and the regular list price. Denver, Pueblo, Coloredo Springs, Trinidad and other Colorado points.

"In years past the Sugarland people have sold considerable sugars in also Albuquerque, Las Vegas and other New Mexico points.

"J. T. W."

A true and correct copy of the second of said letters reads as follows, to-wit:

"April 18th, 1892.

"George S. Eastwick, Esq., New Orleans, La.

"DEAR SIR: If the Sugarlands Refinery is to market its product in Missouri River points, the Western Sugar Refining Company of California will have to be its competitor and in that case will share the loss with us. I would keep my price in Texas, so that they would seek a market for their product in Missouri River district."

"Yours truly,

"H. O. HAVEMEYER, *Pres.*"

A true and correct copy of the third of said letters, written by H. O. Havemeyer, President of complainant corporation, to Robert Oxnard, then complainant's agent in California, reads as follows, to-wit:

"April 25, 1892.

"Robert Oxnard, Esq., San Francisco, Cal.

"DEAR SIR: Yours of April 18th, is received. The Sugarlands refinery has been driven out of the State of Texas by us, which means that our price for granulated to the consumer is cheaper than he could supply it. He now seeks his market in the Missouri River territory which is yours. I think it is good policy for you to sell what sugar you have to market East of California in that territory. As long as you can do that there is no need of regarding him. If

you cannot you will have to lower your price to meet his competition.

"Yours truly,

"H. O. HAVEMEYER."

XXXIV.

The suppression from competition of the grocery grades of plantation sugar in the Hawaiian Islands was accomplished by complainant for the purpose of its effect in suppressing such competition "elsewhere in the country," and particularly in Louisiana; this being done by fraud and by the exercise of the monopoly complainant is seeking herein, to continue, in defiance of the laws of Louisiana, as exhibited in two other of said letters, which were written, sent, received and acted upon, according to the tenor thereof; same being typical illustrations of the manner in which complainant exercised its monopoly in Louisiana, and being also a forecast of how it will continue to do so if the injunction applied for herein is perpetuated,

82 a true and correct copy of the first of said letters, written by Hannan, complainant's agent in California, to H. O. Havemeyer, complainant's president, reading as follows, to-wit:

"Western Sugar Refining Company.

"SAN FRANCISCO, Feb. 4, 1904.

"Mr. H. O. Havemeyer, #117 Wall Street, New York City, N. Y.

"DEAR SIR: Several days ago I forwarded to Mr. Mott a sugar contract between the Honolulu Plantation Co., a corporation owning the plantation near the City of Honolulu, and the American Sugar Refining Co. These contracts were originally printed covering the crop years of 1903-4 and 1904-5. Many large stockholders of this company are business men of San Francisco and several of the wholesale grocers of this city own large blocks of stock.—A number of meetings of the board of directors were held prior to the signing of this contract, and at some of the meetings a number of influential stockholders were present. We were advised as a result of these several meetings that the company would not, under any circumstances, sign a two years' contract. Writer, of course, was not present at any of the meetings, but from information received they were quite stormy, the stockholders feeling very bitter, indeed, regarding the prices ruling in the raw sugar market. It developed during the progress of these meetings that this company has and is seriously considering making a washed sugar, and we understand that one of the local merchants made the statement in one of the meetings above referred to, that he would contract for the entire quantity of washed sugar that they could produce at a reasonable price.

"Messrs. Spreckels are in very close touch with a number of the large stockholders and all the pressure possible was brought to bear to make them reconsider their decision not to sign the two years' contract, but without avail. When it developed that they would

positively not sign for two years, but would sign for one year, we thought it wiser to close the contract for one year than to leave the matter open, and the statement was made by some of the calmer individuals present, that they did not desire to take any action antagonistic to this company, but their refusal to sign a two years' contract was due entirely to the unknown conditions which might exist in the sugar market relative to the passage of the recent Cuban reciprocity treaty.

"The Honolulu Plantation Co. is one of the newer plantations and has a new modern factory and, from all accounts, some very desirable land, but up to the present time they have been spending money for fixed capital improvements very rapidly, and the result is at the present time a very large floating debt. It is more than likely that this action on the part of the above company is now known to every plantation in the Islands and what it will develop into is purely a matter of conjecture. Personally, I have been fearful of something of this kind for some time past, owing to the fact that there is absolutely free trade between the Hawaiian Islands and the United States, and also from the numerous references on the part of plantation owners to the possibility of marketing washed sugar. At one of the meetings above referred to, figures were presented to the stockholders present showing the cost of all the machinery necessary and the estimated cost of producting washed sugar as against the present method of making it into raws.

"As far as this Company is concerned we think it wiser to sign a one year's contract under the conditions confronting us, even though we have tw, years' contract with the other plantations represented by J. D. Spreckels & Bros. Co. and W. G. Irwin & Co. I presume this matter will lie dormant in its present shape for the balance of this crop year, but whatever develops along this
83 line, I will write you fully as it is, in my opinion, a very serious matter, threatening not only the industry of this Coast, but also as to its effect elsewhere in the country. You are of course aware that the crop of the Islands amounts to about 400,000 short tons.

"Very sincerely,

"W. H. HANNAM."

A true and correct copy of the second of said letters reads as follows:

"Feb. 15, 1904.

"W. H. Hannam, Esq., Western Sugar Refining Co., San Francisco, Cal.

"DEAR SIR: I have your communication of Feb. 4th. Correspondence of mine of years ago would indicate the apprehension I was under when the discrimination was made by Mr. Spreckels in favor of certain Honolulu Plantations. One refinery has been built in San Francisco, and it is a wonder to me the other planters do not make refined sugar, and washed sugars come into that category, inasmuch as it will be suitable for direct consumption. With the enormous crop of 400 short tons from the Hawaiian Islands, the refined

industry of the entire United States is very seriously threatened and until peace is made with the Hawaiian Island Planters and they are all put on the same basis so that we can treat with them as a body, we will never be free from agitation, accompanied by very serious disturbances.

"You did very well in making the contract. I think some discreet person should be sent to the Island—with the Spreckels interests to lead—to extend our contracts, and not wait until their termination. In this connection the Hawaiian Island people may understand at the start that of their game is to make refined sugar, and by refined sugar it is meant all sugar that can go *inot* direct consumption without re-refining in the United States, that they will awaken a dormant apprehension of the beet people, that the beet interest of the United States is menaced by the Hawaiian Islands: It has often been brought to my attention that a duty on Hawaiian Island sugars should prevail, corresponding to that from Cuba on the 80% of the Dingley rates. This effort has been quieted, but it is my judgment, that the slightest indication of the Hawaiian Islands to invade the territory of the United States with refined sugar, would start it up, and most successfully.

"I would not put this forward as a threat, but I would have it clearly intimated by the discreet person that is sent to the Hawaiian Islands.

"The sooner that the Messrs. Spreckels indicate to the Hawaiian Island planters that their interests in the Hawaiian Islands are going in with the others, and express it in the form of a contract—extending the present contract three to five years—the better. I am not sure but that it will be best to terminate the present contracts, and put all the Hawaiian Island Planters on the same footing, at once. The advantage we have gained at present would be insignificant compared to the ultimate advantage of probable extinction of refined sugar from the Hawaiian Islands.

"Yours truly,

"H. O. HAVEMEYER."

XXXV.

The sugar refiners who organized the complainant corporation, by deeding over their refineries to one central controlling
84 company, and by receiving for the same the stock of said central controlling company, first named said central controlling company the Sugar Refineries Company, and domiciled it in New York. Said combination was attacked by the State of New York as an illegal combination or trust, and there was judgment for the State of New York in the courts of said State against the Sugar Refineries Company, declaring it an illegal combination, and ordering it dissolved. Whereupon, the present complainant, the American Sugar Refining Company was organized, and was domiciled in New Jersey, and all the refineries of the Sugar Refineries Company were transferred to the American Sugar Refining Company, and the stock of the American Sugar Refining Company was issued to the stockholders of the Sugar Refineries Company, said

change and transfer being one in name and form only, and being intended purely and solely to evade and defeat the just decree of the courts of New York, above-mentioned.

XXXVI.

The sugar crop in the State of Louisiana is one of the chief staple of the State, and amounts, in a good year, to over six hundred million pounds. Since the public disclosure of the above correspondence, and of other facts, showing that complainant's monopoly was used to secretly undermine the value of that staple, for the enrichment of complainant, and to brow-beat and intimidate all opposition or buying of raw sugar by independents in Louisiana, and to subjugate and cow- the whole sugar trade in said State, in the systematic, and determined and unscrupulous manner shown in said letters and in other ways, complainant has made no change whatever in its business methods; has kept said Witherspoon as its Manager in charge of all its affairs in Louisiana; and has held down, by and through its said monopoly, the price of sugar to the same differential below the normal price in New York slightly changed in amount only as that which it had fixed and had caused to prevail before said disclosure.

XXXVII.

The misconduct of complainant in the things and matters covered by the law it now attacks caused the House of Representatives of the United States to make a special investigation, through a
85 Committee, into complainant's connection with the sugar trade, and said Congressional Committee, after the taking of much testimony, returned to said House, in the year 1911, a report condemning complainant as an unlawful monopoly and conspiracy in restraint of trade, particularly in its dealings towards the sugar producers of Louisiana, as will be seen from a copy of said report filed herewith.

XXXVIII.

The United States has instituted two suits against complainant charging it with violating the Federal law against trusts and monopolies. In the first of said suits, the complainant was discharged under a judgment of the Supreme Court of the United States, reported in the 156 U. S. Reports, page 1, on the ground that only monopoly of manufacturing being charged or proved, no case was made out under said anti-trust law. In 1910, the United States brought another suit against complainant in the United States District Court of the Southern District of New York, charging it with violations of said anti-trust law, and said suit is pending, progressing towards trial and judgment in said Court, and for fuller reference the petition, answer, and printed testimony in said suit are filed herewith.

XXXIX.

Complainant's monopoly having continued in the state, under the same conditions, in the same fashion, under the same management, and with the same results as before the disclosures of 1912, mentioned hereinabove, the Louisiana Constitutional Convention of 1913, which was assembled for narrowly limited purposes, amended Article 190 of the Constitution, same being one of the few articles of said Constitution changed by said Convention, said amendment being written with a special view to protecting the sugar industry in Louisiana from the illegal practices of complainant; and with the same special view to protecting said Louisiana sugar industry from the said illegal practices of complainant, the General Assembly of Louisiana, for 1914, adopted Act 288 of 1914, containing the provision, objected to by complainant in its advertisement quoted in the next paragraph hereof, as to the systematic buying of products of Louisiana at a lower price than the same purchaser pays in other States. All these efforts, and those subsequently made by the Legislative and the Executive Departments of the Government of Louisiana,
86 and particularly that made in the law complained of herein, were made because of the great enfeeblement of said industry, under complainant's oppressions, and under other misfortunes; and any injunction given complainant herein will continue the enslavement and the impoverishment of said industry under complainant's monopoly.

XL.

Complainant's monopoly having continued in the State, under the same conditions, in the same fashion, under the same management, and with the same result, as before said disclosures mentioned hereinabove, the Governor of the State, in the year 1914, caused a suit to be instituted against complainant, through the District Attorney of the Parish of Orleans, for the ouster of complainant from the state, and for the institution of a receivership over its refinery. Complainant, knowing how dependent the sugar producers of Louisiana were upon its refinery for an avenue to market for their raw sugar, thereupon announced, on the eve of the opening of the sugar harvest, that it would not operate during the season and would not buy any Louisiana sugar. Complainant assigned as a reason for this course that the Legislature of Louisiana had made it impossible for complainant to continue buying sugar in Louisiana, by passing an act regulating procedures in anti-trust cases, in which a rule of evidence was established to the effect that proof of a systematic buying of a product in this State, for a lower price than the same concern systematically paid, for the similar product in another State, should be weighed as evidence in any anti-trust prosecution. Complainant's said announcement was published as an advertisement in all the New Orleans newspapers, and read as follows:

"To the Public:

"The Chalmette plant of the American Sugar Refining Company has been closed upon our advice as its counsel.

"In accepting this advice the Company has informed us that it desires to reopen the refinery as soon as we shall advise that it may properly do so without material prejudice to the interests of its stockholders.

"This refinery has been operating on an old stock of sugars, which lasted an unusually long time because of the light demand. The Company wished to continue without interruption, and so notified us. Our advice was sought as to purchasing the Louisiana sugars necessary for the operation of the plant. Fully appreciating
87 our responsibility, we have reluctantly advised the Company that under present conditions, it would be inadvisable to make purchases of Louisiana sugars. This necessarily involves the closing of the Chalmette Refinery for the time being.

"The following considerations have compelled this advice:

"Suits are pending against the company claiming damages aggregating one hundred and seventy million dollars or more, founded upon the assertion of the Company's responsibility for the course of prices which has always prevailed here openly during the period of the year when the bulk of the crop was marketed, and which prevailed before the Company entered the State.

"The State of Louisiana has also filed a suit seeking to drive the Company from the State, upon the same asserted ground, and has chosen to be represented by the same attorney who is prosecuting more than three-fourths of the damage suits—a fact which of itself prevents even an approach to an open minded consideration of the State's relation to the Company, and of the interest of the whole people of the State.

"This course of prices is due to market conditions and economic laws, which, when known and considered, cannot fail to be convincing. This is the foundation issue in the damage suits, the discussion of which has no proper place in this statement.

"The legal situation, moreover, has been made exceedingly complex by reason of the harsh and unequal provisions of Act 288 of 1914.

"This law declares, in effect, that the fact that a corporation, operating here and elsewhere, buys sugar here for less than it pays in other markets, shall be evidence of its being a monopoly. The Act further provides for the issuance of an injunction in summary proceedings.

"This Act of 1914 seems to have been designed (at least by its author) to prevent the American from buying Louisiana sugars at less than the New York price, regardless of the actual Louisiana price and regardless of the fact that all other refiners here might be buying at the lower Louisiana price, as they are now doing, and have been during this crop season.

"However unjust this law may seem to be, and however patent the legality of buying at the New Orleans price, regardless of the

price in other markets, it is evident that the Company should not be subjected to the risk of the penalties of the Act and to the risk of a possible collateral effect upon the damage suits, which involve the very question of the Company's responsibility for the course of prices in the past.

"Such buying at the New Orleans price would be practically an invitation to the State to seek the enforcement of the severest penalties which it may conceive to be provided, and to permit the use of its name and prestige to aid the damage suit plaintiffs. Particularly in view of the fact that the State has chosen to speak and act through the same attorney who represents the interests of the damage suit plaintiffs and his own interest. What else is to be expected, in view of the conduct of the ouster suit, which the State has already begun, in which it seeks to obtain from the Court the harshed and most unusual 'remedies.'

"It is patent that the American cannot, commercially speaking, buy on this market at the arbitrary New York price, when the New Orleans price is substantially and normally lower. Even leaving out of consideration the ouster suit and the pending damage
88 suits for such vast amounts, such a course of business would be unnatural and, in a commercial sense, impossible.

"Under these conditions, the only possible action for the present is inaction. Hard as it may bear upon the Company in the loss of operating profits and business, upon the company's employees in the loss or diminution of their wages, and upon the many sugar producers desirous of selling their product at market prices, in the loss of an otherwise willing purchaser,—the course advised seems to us unavoidable.

"JOSEPH W. CARROLL.
"GEORGE DENEGRE.
"HUGH C. CAGE.

"New Orleans, Dec. 14, 1914."

XLI.

The suit instituted by the Governor of Louisiana, as aforesaid, through the District Attorney of the Parish of Orleans, for the ouster of complainant from the State, went to the Supreme Court of Louisiana, upon an exception to the authority of the District Attorney to sue for the State, and there the exception was maintained, and the suit was dismissed, in May, 1915. Copies of the petition in said suit, and of the exceptions in said case, are filed herewith.

XLII.

A few days after the dismissal of the aforesaid suit, the Governor called the Legislature in special session, for the purpose of enacting laws for the regulation, investigation and suppression of trust- and monopolies, in general, and for the regulation of the sugar refining business, in particular; and, in this message to the General Assem-

bly he set forth that the history and the present oppressions of the complainant made such legislation necessary, as follows, to-wit:

May 17th, 1915.

To the General Assembly of the State of Louisiana.

GENTLEMEN: The purposes for which you have been called in extraordinary session are indicated by the proclamation and it is not deemed necessary to elaborate them in detail.

* * * * * * *

Your attention is invited to the paragraph in the proclamation convening you in extraordinary sessions which reads as follows:

"To enact legislation effectively to protect trade and commerce against monopoly and other unlawful combinations, agreement- and conspiracies in restraint of trade, to provide adequate remedies and prescribe the mode and method of procedure, to prescribe penalties and forfeitures, and generally to do in relation to the subject matter what may be deemed necessary."

Generally speaking, there should be effective laws to protect the people against unlawful combinations and conspiracies in restraint of trade. But there is special and immediate need for such legislation to safeguard and protect the interests of thousands of people who are engaged in agricultural pursuits. The future prog-
89 ress and material welfare of the State depends upon the prosperity of its farmers. They cannot be successful if the State through inaction tolerates and thus promotes such combinations and conspiracies as to rob them of the fruits of their toil.

The situation that confronts the people engaged in the production of sugar and the efforts made to protect that industry against threatened ruin are well known. Notwithstanding the protective duty levied by the Federal government on imported sugars, the sugar industry of the State has been gradually declining until it has reached a state of prostration. This condition resulted from the unlawful operations within the State of the American Sugar Refining Company and its allied interests, which had in effect reduced the producers of sugar to a condition of serfdom.

Proceedings were instituted to curb the rapacity of the "trust" or force it to leave the State. Its response has been an arrogant defiance of our State laws and now, apparently with confident belief in its power, it has impudently given notice to the people of the State that it will send its paid representatives here to prevent the representatives of the people from enacting such legislation as may be needed to drive it from its prey upon which it has been feasting for so many years. If a somewhat similar condition does not exist as to other agricultural industries, it is liable to arise unless effective measures are adopted.

It was to be anticipated that any effort to secure adequate and effective legislation for the special purposes indicated would be followed by the usual argument that capital will be deterred from seeking investment in the State. There would be as much reason to argue against the enactment of more stringent laws against larceny

on the ground that such legislation would prevent people from coming into the State to make their homes. We do not need the capital that might come for the purpose of robbing the people any more than we need and desire the immigration of thieves.

The State of Louisiana has never been unfair in its treatment of capital and there is no ground even for a suggestion that its policy will be different in that regard in the future. Its policy has always been and will continue to be sane and liberal. The legitimate operations of capital have been and will always be promoted and assisted in every way possible. Even the American Sugar Refining Company has no just cause of complaint. It has been left undisturbed for many years during which it has been doing business in the State, and the controversy with it arose only when it insolently refused to deal justly and fairly with the thousands of the people of the State engaged in the production of sugar.

It must be borne in mind that the agricultural activities of the State represent an investment by our people of hundreds of millions of dollars. It is productive capital. The material welfare of the State and the prosperity of all our people are dependent directly and indirectly upon its avails. On the other hand, there is, or in any event will be, comparatively a small amount of unproductive capital invested in such concerns as may oppress our agricultural interests. To fail adequately to protect the large and vital interests through an unwarranted fear that legitimate capital might be frightened would be nothing short of a crime.

* * * * * * *

As to the other matters submitted for your consideration, I beg in lieu of special reference to them to invite your attention to the proclamation convening you in extraordinary session.

All must realize, I am sure, that the people of the State can receive the service which they have a right to expect of your honorable body only when all personal and political considerations are for the time laid aside. I am pleased to believe that you will agree with me that you should rise to that high plane in considering and endeavoring to solve the problems which face you.

Respectfully,

L. E. HALL, *Governor.*

90 whereupon the General Assembly enacted a general anti-trust law, and a law for the investigation of trusts, and the law which complainant attacks herein. After said laws were promulgated, the Attorney-General of Louisiana, in a petition following closely the lines of that in the ouster suit, which was dismissed as aforesaid, filed a new suit for the ouster of complainant from the State, and said suit is now pending, in the Civil District Court of the Parish of Orleans, and will be heard some time during the month of October on an application for a preliminary injunction against the carrying on of any business in the State by complainant, and for the appointment of a receiver to its refineries.

XLIII.

After the public in Louisiana learned, in 1912, through the proceedings in the aforesaid suit of the U. S. Government against complainant, under the Sherman law, of the complainant's conspiracy in restraint of trade, the sugar planters of Louisiana filed suits for damages against complainant, for loss upon their sugar due to complainant's manipulation of prices, and said suits, for an amount not far from $200,000,000 in the aggregate, under the triple-recovery clause of the Sherman law, are now under way in the United States District Court for the Eastern District of Louisiana.

XLIV.

Due to a belief on the part of the public in Louisiana that the real reason for the said closing down of said definery was that complainant hoped to congest the Louisiana sugar market, and to coerce and terrify the Louisiana sugar producers into asking for the dismissal of said ouster suit; due to the long continued oppressions of the public by the methods indicated in the above-quoted letters; due to the failure of complainant to change its methods, after the exposure of their criminality; and due to the conviction in the public mind that immorality such as complainant had betrayed and was betraying, and was holding out the prospect of continuing, in business, could not be tolerated, the regulation of the sugar refining business was undertaken by the General Assembly of the State of Louisiana, at said specially convened session of the General Assembly, in the law attacked in this cause; and it is now set up in bar of complainant's attack that the same iniquity which necessitated the enactment of said law, necessitates now the closing of the doors of equity to complainant.

XLV.

In the alternative, if the Court rules that the complainany has a standing in equity, defendants say, in answer to the different paragraphs of the bill:

91 Paragraph I.

The American Sugar Refining Company is a corporation, and is a citizen of New Jersey; W. N. McFarland is Supervisor of Public Accounts of the State of Louisiana, and is made ex-officio Inspector of Sugar Refining by Act No. 10 of the Extra Session of the General Assembly of Louisiana; Luther E. Hall is Governor of Louisiana, and Ruffin G. Pleasant is Attorney General of Louisiana.

Paragraph II.

The averments of this paragraph being conclusions of law, they are generally denied, except that it is admitted that the matter in controversy exceeds five thousand dollars.

Paragraph III.

Complainant was organized, at the time and place alleged in the bill, for the purpose of effecting a general consolidation of sugar refineries in the United States, and acquired, in 1891, the Louisiana Refinery, for which complainant paid, as it did for all its refineries, an inflated price, in watered stock. Complainant increased the daily capacity of said refinery until, in 1909, it was 2,500,000 pounds, whereupon, for the purpose of over-aweing all competition, as set out in the contemporaneous correspondence between complainant's principal executive officers quoted in paragraph VI, above, complainant built, at a cost of $6,000,000.00, another refinery, with a daily capacity of 3,000,000 pounds, at Chalmette, a few miles below New Orleans. After the Chalmette refinery was built, the Louisiana refinery was closed. Complainant made no effort to sell said Louisiana refinery, and held, and holds, same, in good order, and idle, as a menace to any proposed competition.

Complainant has found it profitable, in the administration of its monopoly, to limit the territory of distribution of its various refineries, and the Louisiana refinery has been kept idle, not because of the bona fide limitations to the distribution of sugar, but because the idleness of said Louisiana refinery enlarged the territory of complainant's refineries at other refining centres, thereby adding
92 to the harmony of complainant's monopoly.

There have been no changes in the process of refining since 1909, and there is no substantial ground for complainant's averment that said Louisiana refinery is too antiquated to be operated economically, as partly appears from complainant's contradictory averment that said refinery is kept idle as a substitute, for emergencies. Contradictory though said averments are, neither is true; said refinery being kept intact to preserve complainant's monopoly of the refining business and trade in Louisiana, as aforesaid.

Complainant's allegation that it purchases, on an average, less than half of the Louisiana sugar crop, is misleading and deceptive, inasmuch as a large percentage of said crop is not made into refining grades; and if complainant's control of the market in Louisiana is to be tested by the percentage of sugar bought by complainant, as proposed in this paragraph, it must be upon comparing complainant's raw sugar purchases with the total production of raw sugar alone. There are no accurate statistics on this point, but a fair estimate would be that one-fourth of said crop is made into grocery grades, and is sold by the planters direct to the trade, and that, of the raw sugar produced, and sold to refiners, complainant buys, and has always bought, seventy per cent. or more. The small percentage of said raw sugar crop bought by others than complainant has had no effect whatever to deter complainant from utilizing the size of its purchases to force large handlers of sugar not to sell to others, who might contest its monopoly, and not to encourage the establishment of other refineries. The two small refiners who have operated, the Henderson and the Colonial refineries at New Orleans, have never ventured to buy sugar until after the price was fixed by complainant, except in a few rare and isolated instances.

The artificial conditions established in Louisiana by complainant, through the closing down of the local, and the St. Louis, and the Philadelphia refineries, and through complainant's successful conspiracy for preventing the sugar planters of the State from building a local planter's refinery, have resulted in quantities of the Louisiana raw sugar being shipped north, as alleged in the bill.

93 The desirability of said Louisiana raw sugar, for refining, would, but for complainant's artificial restraints upon conditions and the markets in Louisiana, insure its all being handled locally. The shipment to complainant's northern refineries of the quantities of said sugar alleged in the bill, with so much refinery capacity idle in complainant's hands, is an unnatural diversion of trade, due entirely to the illegitimate needs of complainant's monopoly.

Complainant's averment that various alleged handicaps and drawbacks in the handling of raw sugar at New Orleans compel the putting of the price in New Orleans at a lower level than elsewhere, is without any foundation whatever, as partly appears from the contradictory averment that, on account of the economic and geographical advantages of the refinery location at New Orleans, complainant built the Chalmette refinery, at a cost of $6,000,000.00, when it was then operating the Louisiana refinery, with a cap-city almost as great as that of said Chalmette refinery; there being no pretense that said Louisiana refinery was, at that time, in any way antiquated.

The object of complainant's organization, and of its whole course and system in Louisiana, has been to limit and reduce the refinery facilities at New Orleans, and whatever said alleged handicaps and drawbacks in the handling of raw sugar at New Orleans have been, their cause has been complainant's illegal conduct in limiting and reducing said refinery capacity at New Orleans. Complainant's allegations that said alleged handicaps and drawbacks compel it to pay a lower price in New Orleans than elsewhere, is a confession that it has thrown, and is seeking to continue to throw, all the disadvantages consequent upon its suppression of the refinery capacity at New Orleans upon the producers of raw sugar.

Since 1912, the proceedin*g* against the complainant, referred to above, have given it a reason for manipulating the sugar situation in Louisiana to accord with the defense presented in its bill, that it is not a monopoly, and, if the percentages of the crop melted in Louisiana have not been altered to suit the complainant's case, it has not been owing to a lack of power on its part to do so. Com-

94 plainant, for such purposes of defense, did not operate at all during the usual Louisiana sugar crop season in 1914-15, and the abnormally small percentages of the Louisiana sugar crop which complainant alleges it has melted in Louisiana were handled in the years immediately following the institution of said proceedings against complainant.

The volume of said shipments has, as the bill alleges, increased continuously since 1911, but, instead of said sugar being less in demand locally, as complainant pretends from said fact, the differential in price, maintained by complainant on said sugar in New Orleans,

under the New York prices, has only ranged at 15 cents a hundred pounds since 1911, whereas before 1911 said differential ranged at more than 25 cents a hundred pounds. This addition of more than 10 cents a hundred pounds on the price of the Louisiana raw sugar has been due to the one concerted effort of the Louisiana planters which complainant did not manage to circumvent, or control, which was, that, in 1911, a number of said planters pooled a million bags of raw sugar, and sold same to the Arbuckle refinery in New York, and delivered same by water. To lessen the chance of such sales thereafter, complainant decreased its price differential in New Orleans, under the New York quotations, as aforesaid.

Said shipment of Louisiana raw sugar to complainant's northern refineries arrive in New York when there is virtually no sugar on hand, or when the first new crop sugar from Cuba is coming in, and complainant is enabled, by supplying itself with such Louisiana sugar, at the differential aforesaid, to influence downward the price of the Cuban sugar it needs on the said New York market. It cannot be said with certainty whether the fraudulent sales from refiner to refiner, for fixing low market quotations, referred to in the correspondence quoted above, for the purpose of price depression, are still being made by complainant, but the officials who engaged in that practice are still in charge of their respective departments of complainant's business.

Paragraph IV.

The allegations of this paragraph are admitted.

95 Paragraph V.

The allegations of this paragraph constitute conclusions of law, which are denied.

Paragraph VI.

The business of refining sugar, in the State of Louisiana, involves, normally, the various elements set forth in this paragraph, but, as now conducted in the State, the paramount feature of said business is the complainant's monopoly.

Paragraph VII.

The business of sugar refining is not, and never has been, since complainant's organization, a private business, inasmuch as the compression of same into the hands of one refinery, has, in justice and equity and necessity, impressed same with a public interest.

Act No. 10 of the Special Session of the General Assembly of 1915 was a legislative recognition of a great public evil, and of the necessity of throwing some safeguards around the many, who, as sellers of raw sugar, are compelled to deal with complainant's one monopolized refinery, or through some other channel influenced or dominated by complainant.

Paragraphs VIII and IX.

The allegations of these paragraphs are conclusions of law, which are denied.

Paragraph X.

The business done by complainant in the buying and in the refining of sugar, is, in so far as same is regulated by said Act No. 10, a strictly intrastate business. The other allegations of this paragraph, being conclusions of law, are denied.

Paragraph XI.

Complainant's lawful right to buy sugar, and to do business in Louisiana is, to no extent, hampered or restrained by said Act No. 10, the aim and purpose of said Act being to make impossible in said business the repetition of complainant's unlawful, dishonest and demoralizing record.

The fundamental economic law of supply and demand,
96 laid down by complainant in this paragraph, and all other economic laws and conditions in the business of refining sugar in Louisiana, have, to a large extent, been suspended, or nullified, or reversed by complainant's monopoly.

Complainant cannot profit by its own wrong, or put the consequences of its wrong on the producers of raw sugar by saying, as it does in this paragraph, that they bring their sugar to market during the months of November and December, with a rush too great for the refining capacity, when said sugar could, but for complainant's wrong, have found a market as plantation granulated, or through a planter's refinery, or through the refineries at Sugarlands, at St. Louis, at Philadelphia, and even at New York, which complainant suppressed or boycotted away from the Louisiana market.

It is misleading and deceptive for complainant to allege that, by reason of the alleged surplus of sugar sent by the Louisiana producers to market in the months of November and December, it has been necessary to reduce the price, to cover storage charges, and the like; for all sugar, that which was refined as it came to market, as well as that stored, was subjected to the complainant's unvarying process of price manipulation, as set forth in the letter from complainant's Vice President to its President, quoted above, in paragraph —, as the settled policy of complainant in dealing with raw sugar.

The above answers the four detailed reasons set forth by complainant why it has not profited by the aforesaid price differential, but defendants believe and aver that complainant has made said price-differential at New Orleans enormously larger than was necessary to cover said pretended disadvantages, due to the alleged want of refinery-capacity.

The other allegations in this paragraph are conclusions of law, which are denied.

Paragraphs XII to XXI.

The allegations of these paragraphs are all conclusions of law, which are denied.

Defendants now deny all and singular all allegations of the
97 complaint which have not been admitted above, impliedly or otherwise.

Wherefore, defendants pray that the complaint herein be dismissed, at complainant's costs, and that they, defendants, be hence dismissed.

They pray, further, for general and equitable relief.

(Signed) RUFFIN G. PLEASANT,
Attorney General of Louisiana.

98 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, the undersigned authority, personally came and appeared R. G. Pleasant, one of the defendants in this cause, who, being duly sworn, deposed and said; that he has read the above and foregoing answer and that all the facts and allegations therein contained are true and correct, except as to those allegations made on information and belief, and, as to the same, he believes them to be true, all to the best of his knowledge, information and belief.

(Signed) R. G. PLEASANT.

Sworn to and subscribed before me, this 21st day of September, 1915.

(Signed) PERCY JOS. HINES,
[SEAL.] *Deputy Clerk Supreme Court of Louisiana.*

99 *Hearing in Part on Application for Preliminary Injunction and Continuance.*

Extract from the Equity Journal.

November Term, 1915.

NEW ORLEANS, TUESDAY, November 30th, 1915.

Court met pursuant to adjournment;
Present: Hon. Richard W. Walker, Circuit Judge.
" Hon. William T. Newman, District Judge.
" Hon. Rufus E. Foster, District Judge.

No. 15285.

AMERICAN SUGAR REFINING COMPANY
vs.
WILLIAM N. MCFARLAND, et als

This cause came on this day to be heard upon the application of the complainant for a preliminary injunction herein;

Present: Joseph W. Carroll, George Denegre, Hugh C. Cage and James M. Beck, Solicitors for Complainant, mover;
" Ruffin G. Pleasant, Attorney General of Louisiana, and Donelson Caffery, Solicitor for Defendants;

Whereupon, after hearing arguments of counsel in part on the said application of the complainant for a preliminary injunction, the cause was continued until to-morrow morning at 11 o'clock, for further hearing.

100 *Case Resumed for Further Hearing and Submission.*

Extract from the Equity Journal.

November Term, 1915.

NEW ORLEANS, WEDNESDAY, December 1st, 1915.

Court met pursuant to adjournment;
Present: Hon. Richard W. Walker, Circuit Judge.
" Hon. William T. Newman, District Judge.
" Hon. Rufus E. Foster, District Judge.

No. 15285.

AMERICAN SUGAR REFINING COMPANY
vs.
WILLIAM N. MCFARLAND et als.

This cause as continued from yesterday, came on this day to be further heard upon the application of the complainant for a preliminary injunction herein, counsel for the respective parties being all present;

Whereupon, after hearing further arguments of counsel for the complainant and the defendants, the matter was submitted—when the Court took time to consider.

101 *Opinion of the Court.*

Filed January 17, 1916.

In the District Court of the United States for the Eastern District of Louisiana. In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
vs.
WILLIAM N. MCFARLAND et al.

Joseph W. Carroll (Carroll, Henderson & Carroll), George Denegre (Denegre, Leovy & Chaffe), and Hugh C. Cage, (Cage, Baldwin

& Crabites), and James M. Beck, for The American Sugar Refining Company, complainant.

Ruffin G. Pleasant, Attorney General of Louisiana, and Donelson Caffery, for William N. McFarland, et al., defendants.

Before Walker, Circuit Judge, and Newman and Foster, District Judges.

By the Court: This suit brings into question the validity of an Act of the Legislature of Louisiana, approved June 10, 1915, which purports to regulate the business of refining sugar and to prohibit certain irregularities and practices in that business. "Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit
102 a penalty upon them which is not imposed upon others guilty of like delinquency this sta-ute cannot be sustained. * * * Arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this." Gulf, Colorado & Santa Fe Railway v. Ellis, 165 U. S. 150, 159.

"A State may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the exper es of government, and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the State, under its General police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests
103 upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates." Connolly v. Union Sewer Pipe Company, 184 U. S. 540, 562.

As to what constitutes arbitrary selection, as distinguished from legal classification, see, also, Watson v. Maryland, 218 U. S. 173. That the statute in question is a case of arbitrary selection of those who are sought to be made the victims of the penalties it prescribes in the absence of any "fair reason for the law that would not require with equal force its extension to others whom it leaves untouched" we think is demonstrated by a statement of its methods of selecting

those engaged in the sugar trade who are to be subject to its provisions and of distinguishing them from others engaged in the same business whom it leaves untouched. A prime object of the statute, plainly disclosed by its provisions, is to prevent a very limited class of persons or corporations engaged in the business of refining sugar in Louisiana from systematically paying in Louisiana a less price for sugar than they pay in other states, and to force them into the practice of paying as much for sugar bought by them in that state as they pay in any other state by subjecting their refineries to seizure and sale if they discontinue the purchase of sugar in Louisiana in the way contemplated by the act. The statute provides "that any person engaged in the business of refining sugar within
104 this state who shall systematically pay in Louisiana a less price for sugar than he pays in any other state shall be prima facie presumed to be a party to a monopoly or combination or conspiracy in restraint of trade or commerce, and upon conviction thereof shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so." This provision is the heart of the statute. Other provisions are but means for enforcing the requirements of this one. If this provision is stricken out the statute is practically inoperative. Another section of the statute provides that "the business of refining sugar within the meaning of this act is hereby defined to be that of any concern that buys or refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys and refines more raw or other sugar that the aggregate of the sugar produced by it from cane grown and purchased by it." This exempts from the operation of the act anyone engaged in the purchase of sugar, though he is also engaged in the business of refining sugar, if he does not carry on that business in Louisiana, and exempts him, though he may carry on that business in Louisiana, if in doing so he does not buy and refine more raw or other sugar that the aggregate of the sugar produced by him from cane grown and purchased by him. One engaged in Louisiana in the business of sugar refining as defined by the statute may, if he does not buy sugar in any other state, systematically pay in Louisiana a less price for sugar than anyone else pays in any other state, without subjecting himself to the adverse prima facie presumption and penalties pre-
105 scribed by the act. One engaged in the business of purchasing sugar, if he is not also engaged in the business of refining, may, without violating the act, systematically pay in Louisiana a less price for sugar than he pays in any other state. One who is engaged in the sugar refining business anywhere else in the world except in the State of Louisiana may, without subjecting himself to any of the penal consequences provided for by the act, systematically pay in Louisiana a less price for sugar than he pays in any other state. We cannot conceive of any fair reason for exempting such a person from the operation of the act and at the same time subjecting to its penal provisions one whose situation and conduct are exactly the same in every particular except that his refinery is located in Louisiana while the exempt person's refinery is located

elsewhere. The result is to make the fact of one's ownership of property in Louisiana the test of the criminality of his conduct in buying a commodity in that state. We take it that a purpose of the statute was to prevent a practice resulting in the undue depreciation of the price of a commodity of the state. But the statute undertakes to prevent such a practice only in the case of certain buyers, leaving beyond the reach of the prohibition other buyers whose practices may be identical and equally harmful in their tendencies. A discrimination between two buyers of a commodity of a state which results in imputing criminality to the conduct of one
106 of them in making his purchases if he owns property or carries on another business in the state while exactly the same conduct of another is left free of such an imputation though he owns the same kind of property or is engaged in the same business, but not in the same place, is not based on any difference between the conduct of the one and that of the other. Those who are attempted to be subjected to the penal provisions of the act are determined by an arbitrary selection, wholly without regard to any difference between their delinquency and that of others whom the statute leaves untouched. This is such a denial of the equal protection of the law as renders the statute invalid and unenforceable.

The case is one warranting relief by injunction.

Ex parte Young, 209 U. S. 123.

The suggestion has been made that, even though the statute in question is an invalid one, a court of equity should not stay the enforcement of it against the plaintiff, because it comes into court with unclean hands, in that in its conduct of the business in which it is engaged it has been guilty of harmful and lawless practices. As the granting of the relief sought cannot be made the means of protecting the plaintiff from the consequences of any misconduct of which it may have been guilty or of enabling it in the future to do anything which it has not a right to do, we are not of opinion that the doors of a court of equity properly may be closed to the plaintiff because of some former delinquency on its part with reference to
107 which the aid of the court is not asked or given. The wrong of a plaintiff which may be invoked to defeat his claim to equitable relief must have an immediate and necessary relation to the equity for the enforcement of which he prays. Talbot v. Independent Order of Owls, 220 Fed. 660.

The conclusion is that an interlocutory injunction should issue as prayed for; and it is so ordered.

108 *Decree.*

Filed January 17, 1916.

In the United States District Court for the Eastern District of Louisiana.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY, Complainant,
vs.
WILLIAM N. MCFARLAND et al., Defendants.

Decree on Application of Complainant for Interlocutory Injunction.

This cause came on to be heard on the application of complainant for an interlocutory injunction during the pendency of the suit at this term and was argued by counsel, and thereupon, upon consideration thereof, and for the written reasons on file, it is ordered, adjudged and decreed as follows, viz:

That the defendants, and each of them, be, and they are hereby enjoined and restrained, during the pendency of this suit, and until a final decree herein, from enforcing, or attempting to enforce, or causing to be enforced or attempted to be enforced, against The American Sugar Refining Company, the complainant herein, the provisions of Act No. 10 of the Extraordinary Session of the General Assembly of Louisiana of 1915, and any and all regulations which may be formulated or promulgated thereunder.

Done and signed at New Orleans, this 17th day of January, 1916.

(Signed) R. W. WALKER,
United States Circuit Judge.

(Signed) WM. T. NEWMAN,
United States District Judge.

(Signed) RUFUS E. FOSTER,
United States District Judge.

109 *Petition for Appeal and Order.*

Filed January 21st, 1916.

United States District Court, Eastern District of Louisiana. In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY, Complainant,
versus
WILLIAM N. MCFARLAND et al.

The petition of William N. McFarland, Supervisor of Public Accounts of the State of Louisiana and ex-Officio State Inspector of Sugar Refining of the State of Louisiana; Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General of the State of Louisiana.

To the Honorable Court Aforesaid:

The above named defendants, and each of them, feeling and being aggrieved by the order or decree made and entered in this cause at New Orleans on the 17th day of January, A. D. 1916, granting an interlocutory injunction to complainant, The American Sugar Refining Company, and petitioners believing that same is contrary to law, do hereby, through undersigned solicitors, appeal from the said order and decree, for the reasons specified in the assignment of errors, which is filed herewith.

Wherefore, petitioners pray that this appeal be allowed; that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order or decree was based, duly authenticated, may be sent to the Supreme Court of the United States, sitting at Washington, D. C., and that the proper order touching the security to be required and furnished by them to protect their appeal, and the proper return day, be made.

(Signed) RUFFIN G. PLEASANT,
Attorney General of Louisiana;

(Signed) DONELSON CAFFERY,
Solicitors for Defendants.

Order.

The petition for appeal above prayed for is hereby granted, and the appeal allowed, upon defendants giving bond, conditioned as required by law, in the sum of Two Hundred Dollars ($200.00) the said appeal being returnable to the Supreme Court of the United States 30 days from date.

New Orleans, La., January 21, 1916.

(Signed) RUFUS E. FOSTER, *Judge.*

Signed in open Court.

110 *Assignment of Errors.*

Filed January 21st, 1916.

United States District Court, Eastern District of Louisiana. In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
versus
WILLIAM N. MCFARLAND et als.

Now comes William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General thereof, defendants, who, having prayed for an appeal to the Honorable the Supreme Court of the United States, herein, assign the following errors in the opinion and decree herein upon which they rely for the reversal thereof:

1. The court erred in failing to uphold the constitutionality and legality of Act No. 10 of the Extraordinary Session of the General Assembly of Louisiana of 1915, and in holding and declaring that said act "is a case of arbitrary selection of those who are sought to be made the victims of the penalties it prescribes"; and further erred in holding that "no fair reason for the law exists that would not require, with equal force, its extension to others whom it leaves untouched."

2. The court erred in holding that the Act in question was arbitrary, and in holding that the legislature unfairly selected certain persons engaged in the sugar trade and subjected them to its provisions, and distinguished them from others engaged in the same business.

3. The court erred in holding that the "prime object of the statute is to prevent a very limited class of persons or corporations, engaged in the business of refining sugar in Louisiana, from systematically paying in Louisiana a less price for sugar than they pay in other States, and to force them into the practice of paying as much for sugar bought by them in that State as they pay in other states by subjecting their refineries to seizure and sale, and in holding that this provision is the heart of the statute, and that if this provision be stricken out, the said statute is practically inoperative.

4. The court erred in failing to uphold the constitutionality and legality of Section 15 of said Act as a reasonable classification by the legislature to meet existing evils, and in holding that it could not conceive of any fair reason for enacting Section 15 of said act, and in holding that the effect of the enactment of said section was to arbitrarily exempt certain persons from the operation of the Act while extending the privilege to others in the particulars set out by the court.

5. The court erred in holding that the effect of Section 15 aforesaid is to arbitrarily make one's ownership of property in Louisiana the test of the criminality of his conduct in buying a commodity in said State.

111 6. The court erred in holding that said statute undertakes arbitrarily to prevent the practice of buying sugar in Louisiana for less than is paid elsewhere only in the case of certain buyers, leaving beyond the reach of the prohibition such other buyers whose situation and methods in other respects may be identical and equally harmful in their tendencies, and in failing to hold that the legislature exercised a reasonable discretion in the classification as made.

7. The court erred in holding that the Act is invalid and unenforcible on the ground that it discriminates "between two buyers of a commodity of a State which results in imputing criminality to the conduct of one of them in making his purchases if he owns property or carries on another business in the State while exactly the same conduct of another is left free of such an imputation, though he owns the same kind of property, or is engaged in the same business, but not in the same place, and in holding that said classification is not based on any difference between the conduct of the one and that of the other, and that those who are attempted to be subjected to the penal provisions of the act are determined by an arbitrary selection only, without regard to any difference between their delinquency and that of others whom the statute leaves untouched, rendering the act a denial of the equal protection of the law, and in failing to hold that the classification as made by the legislature was just, fair and reasonable to meet existing and accute evils under the police power of the State.

8. The Court erred in taking jurisdiction of this cause, thus, in effect, permitting the complainant to come into a court of equity with unclean hands, because of the oppressive and illegal acts committed by it in connection with the subject matter of the litigation fully alleged and shown herein, and not denied by complainant, and in failing to hold that the complainant, by its conduct and acts, and because of its unclean hands, had forfeited the right to come into a court of equity for the relief prayed for by it herein.

9. The Court erred in not holding that, for the suppression of monopoly and other evils it was competent in the legislature to single out for special treatment sugar refineries who buy sugar in Louisiana and in other states and who do not confine their operations to the refining of the sugar produced by themselves.

10. The court erred in holding that the whole act was unconstitutional, and in not holding that the declared unconstitutional provisions, if any, were independent and separable and could be eliminated, leaving the balance of the act intact and valid.

11. The court erred in holding, that there was such a case of probable in-ury to the complainant and of unconstitutionality in Act 10 of 1915 made out, and such a showing made, as to justify the issuance of injunction in limine against the enforcement of the act.

Wherefore defendants pray the U. S. Supreme Court that the

decree herein rendered be reversed and that this court hold and decree that the lower court should not have taken jurisdiction hereof, or in the alternative that this court adjudge the decree rendered to be erroneous, and do reverse the same.

(Signed) RUFFIN G. PLEASANT,
Attorney General of Louisiana;
(Signed) DONELSON CAFFERY,
Solicitors for Defendants.

112 *Appeal Bond.*

Filed January 24, 1916.

Know all men by these presents, that we, William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General of the State of Louisiana, as principals, and Charles M. Hero, of New Orleans, Louisiana, as surety, are held and firmly bound unto The American Sugar Refining Company, a corporation under the laws of New Jersey, in the full and just sum of Two Hundred Dollars, ($200.00) to be paid to the said The American Sugar Refining Company, aforesaid, its certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-fourth day of January in the year of our Lord, one thousand nine hundred and sixteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between The American Sugar Refining Company, complainant, against William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General of the State of Louisiana, defendants, No. 15285, in Equity, of the docket of said Court, a decree was rendered against the said William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General of the State of Louisiana, and the said William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana and Ruffin G. Pleasant, Attorney General of Louisiana, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said The American Sugar Refining Company, citing and admonishing it to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said William N. McFarland, Supervisor of Public Accounts of the State of Louisiana, Luther E. Hall, Governor of the State of Louisiana, and Ruffin G. Pleasant, Attorney General of the State of

Louisiana shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) WILLIAM N. McFARLAND, [SEAL.]
Supervisor of Public Accounts, State of Louisiana.
(Signed) LUTHER E. HALL, [SEAL.]
Governor of Louisiana,
By RUFFIN G. PLEASANT, [SEAL.]
Attorney General & Solicitor.
(Signed) RUFFIN G. PLEASANT,
Attorney General, State of Louisiana.
(Signed) C. M. HERO.

Sealed and delivered in presence of—

____ ____.
____ ____.
____ ____.

Approved by—
(Signed) RUFUS E. FOSTER, *Judge.*

113 UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared, Charles M. Hero, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides at #3236 Coliseum Street, in the City of New Orleans, Louisiana, and is worth the full sum of Two Hundred ($200.00) Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) C. M. HERO.

Subscribed and sworn before me this 24th day of January, 1916.

(Signed) HY. J. LOISEL,
[SEAL.] *Deputy Clerk U. S. District Court.*

[Endorsed:] U. S. District Court, Eastern District of Louisiana. No. 15285. The American Sugar Refining Company vs. William N. McFarland et als. Bond.

114 *Waiver of Citation of Appeal.*

Filed January 22, 1916.

United States District Court for the Eastern District of Louisiana.

In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
vs.
WILLIAM N. MCFARLAND et als.

NEW ORLEANS, LA., January 22, 1916.

To the Hon. H. J. Carter, Clerk.

DEAR SIR: The American Sugar Refining Company, through its undersigned Solicitors, hereby takes notice of the petition for appeal herein and waives citation of appeal.

(Signed) THE AMERICAN SUGAR REFINING COMPANY,
By JOSEPH W. CARROLL,
(Signed) GEO. DENEGRE &
H. C. CAGE,
By J. W. C.,
Its Solicitors.

115 *Præcipe for Transcript.*

Filed January 22, 1916.

Attorney General's Office,
State of Louisiana.

NEW ORLEANS, LA., January 22nd, 1916.

United States District Court for the Eastern District of Louisiana.

In Equity.

No. 15285.

THE AMERICAN SUGAR REFINING COMPANY
versus
WILLIAM N. MCFARLAND et al.

To Hon. H. J. Carter, Clerk U. S. District Court aforesaid, New Orleans.

DEAR SIR: In making up the transcript of appeal in the above numbered and entitled cause please include the following papers

and documents as constituting the record on appeal on behalf of appellants:

1. The petition of the American Sugar Refining Company, filed June 23, 1915, and the exhibits affidavits and Order granting temporary restraining order pendente lite—all attached thereto.
2. The return and answer of defendants, filed Sept. 21, 1915.
3. Hearing and submission.
4. Opinion of court.
5. Order and decree granting interlocutory injunction.
6. The petition for appeal, and order allowing same.
7. Assignment of Errors.
7. Bond.
8. Præcipe.
9. Waiver of citation of appeal.

Yours truly,

(Signed) R. G. PLEASANT,
Attorney General of Louisiana;

(Signed) DONELSON CAFFERY,
Solicitors for Defendants.

116 Copy of this præcipe is hereby acknowledged.

(Signed) THE AMERICAN SUGAR REFINING COMPANY,
By JOSEPH W. CARROLL,
" GEO. DENEGRE &
H. C. CAGE,
By J. W. C.,
Its Solicitors.

117 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 116 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and assignment of errors in the case of The American Sugar Refining Company versus William N. McFarland, et als. No. 15285 of the docket of said Court, said Transcript being made up in accordance with the Præcipe filed herein.

Witness my hand and the seal of said Court, at the City of New Orleans, this 9th day of February, A. D. 1916.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

I, Rufus E. Foster, United States Judge for the Eastern District of Louisiana, do certify *the* Henry J. Carter, whose name is signed to the above certificate as Clerk of the District Court of the United States for the Eastern District of Louisiana, was, at the time of signing said certificate, and is now the Clerk of said Court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such Clerk.

Given under my hand, at the City of New Orleans, in said district this 11th day of February, A. D. 1916.

RUFUS E. FOSTER, *Judge.*

118 I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that I am well acquainted with the handwriting of Honorable Rufus E. Foster, whose name is subscribed to the next above instrument of writing and that his signature thereto is genuine, and I do further certify that he was at the date thereof Judge of the District Court of the United States for the Eastern District of Louisiana, duly commissioned and qualified and acting as such.

In Testimony to the above, I do hereunto set my hand and affix the seal of said Court, at the City of New Orleans, State of Louisiana, in said District, this 11th day of February, A. D. 1916.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

Endorsed on cover: File No. 25,130. E. Louisiana D. C. U. S. Term No. 847. William N. McFarland, supervisor of public accounts of the State of Louisiana and ex-officio State inspector of sugar refining of the State of Louisiana, et al., appellants, vs. The American Sugar Refining Company. Filed February 14th, 1916. File No. 25,130.

Supreme Court, U. S.
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No. 347

Supreme Court of the United States

OCTOBER TERM, 1915.

Appeal From the District Court of the United States for the Eastern District of Louisiana.

WILLIAM N. McFARLAND,
Supervisor Public Accounts of Louisiana, *Et Als.*,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellees.

MOTION TO ADVANCE.

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No. ——.

Supreme Court of the United States

OCTOBER TERM, 1915.

Appeal From the District Court of the United States for the Eastern District of Louisiana.

WILLIAM N. McFARLAND,
Supervisor Public Accounts of Louisiana, *Et Als.*,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellees.

MOTION TO ADVANCE.

Appellants, William N. McFarland, Supervisor of Public Accounts of the State of Louisiana (by Act No. 10, which was declared unconstitutional herein *Ex-Officio* Inspector of

Sugar Refining), Luther E. Hall, Governor, and Ruffin G. Pleasant, Attorney General, of the State of Louisiana, contend that this is a case entitled to preference and to be advanced on the docket of this court, and accordingly move therefor.

The action was brought by the American Sugar Refining Company, appellee (complainant in the court below), to restrain the enforcement, operation and execution of Act No. 10 of the Extra Session of the Legislature of Louisiana for the year 1915, being an act to regulate the business of refining sugar in Louisiana in so far as it is necessary to protect same and the public from monopoly, and establishing to that end rules and conditions on which it may be carried on, and prohibiting certain irregularities and practices; defining said business; imposing an inspection fee upon refined sugar; creating the office of State Inspector of Sugar Refining and assistants, and that the Supervisor of Public Accounts shall be *Ex-Officio* State Inspector of Sugar Refining, with salary, etc., and for other purposes, a copy of the act being annexed to the bill, on the ground that the act conflicts with the Constitution of the State and of the United States.

The complaint alleged that said act impaired and destroyed the private ownership and control of complainant's business; that it violates Article 2 of the United States Constitution and the Fourteenth Amendment; that it denied to complainant the equal protection of the law, by reason of the exemptions made by the act, and that it unlawfully discriminates against it; that the act interferes with foreign and interstate commerce, and violates Section 8, Article 1, of the United States Constitution; that the act is oppressive, unreasonable and discriminatory; that the penalty imposed by the act denied to complainant the equal protection of the law;

that the act, in providing for an inspection of the books and accouns of concerns subject to the act, subjected complainant to unreasonable search of its papers and effects, etc.

The case was heard by three Judges, under Section 266 of the Judicial Code, and, after hearing, the Court, in a written opinion, declared the law unconstitutional, and an interlocutory decree was rendered declaring the act to be "invalid and unenforceable," and as a result appellants were enjoined "from enforcing or attempting to enforce or causing to be enforced against the American Sugar Refining Company" the said act, any and all regulations which may be formulated or promulgated by the Supervisor of Public Accounts.

The appeal was taken by appellants, defendants in the court below, under said Section 266.

Appellants call attention to the fact that the effect of the decree prohibits State action against an oppressive monopoly, and suspends the collection by the Inspector of Sugar Refineries of one-half a cent on each 350 pounds of granulated sugar made, which the act directs "shall be paid into the State treasury for account of the fund for the inspection of sugar," and which funds are to be used to pay inspectors and assistants, all for protecting the people of Louisiana from monopoly in the business of refining sugar.

Appellants also direct attention to the provisions of Section 266 of the Judicial Code, that in all cases of the character herein involved, "the hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable time after the expiration of the notice" required, with the right to appeal from the order granting an interlocutory judgment to this Court.

Appellants cite Foster's Fed. Pr. (5th Ed.), Par. 373, declaring:

> "By statute a preference is given * * * in the Supreme Court to actions in which a State is a party or in which the execution of the revenue laws of a State is enjoined," citing
>
> U. S. Rev. St., Par. 949; *Ward vs. State*, 12 Wall. 163; *Hoge vs. R. & D. Co.*, 93 U. S. 1; *Davenport vs. Dows*, 15 Wall. 390; *Miller vs. State*, 12 Wall. 159.

Also to same work, page 2526, wherein the following appears:

> "Where a State is a party, or the execution of the revenue laws of a State is enjoined or stayed, such State or the party claiming under the revenue laws of a State the execution whereof is stayed, is entitled on showing sufficient reason to have the cause heard at any time after it is docketed, in preference to any civil cases pending in the court between private parties."
>
> See *Central R. R. vs. Bourbon County*, 116 U. S. 538.

Also Rule 26, No. 7, which provides, after setting out what cases will be heard by preference:

> "No other cases will be taken up * * * except under special and peculiar circumstances to be shown to the court," citing
>
> *Poindexter vs. Greenhow*, 109 U. S. 63.

We think the facts and circumstances shown not only bring it entirely within Rule 26, No. 7, but also within the rule announced in the foregoing citation from Foster's Federal Procedure.

This suit, although nominally against officers of the State, in truth and fact enjoins State action in a matter of deep concern to the public, wherein the State government, in the exercise of its police power, would be embarrassed and brought to a standstill, in so far as the suppression of monopoly in the business of sugar refining is concerned, by delay, should this case have to await an ordinary hearing.

In this connection, we note that precedence is given appeals in the Circuit Courts of Appeal from an order granting or continuing injunctions under Paragraph 7, Act of March 3, 1891, 26 St. 828, as amended April 14, 1906.

The case here presented is moreover one of "special and peculiar circumstances."

The attempt of the State, under the police power, to protect her people from monopoly, by the enactment of Act 10 of the Extra Session of 1915, and the great and acute suffering by the public from the monopoly, which continues *pari passu*, with the injunction herein granted, as will appear more fully from the answer herein, makes the case one of "sptcial and peculiar circumstances," which should be heard at the earliest possible date.

Respectfully submitted,

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Solicitors for Appellant.

DANIEL WENDLING,
Of Counsel.

Supreme Court, U. S.
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United States Supreme Court

No. 847.

OCTOBER TERM, 1915.

WILLIAM N. McFARLAND,
Supervisor of Public Accounts of Louisiana, and Others,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

Appeal from the United States District Court, Eastern District of Louisiana, from Decree Granting Injunction.

Brief on Behalf of W. N. McFarland and Others, Appellants.

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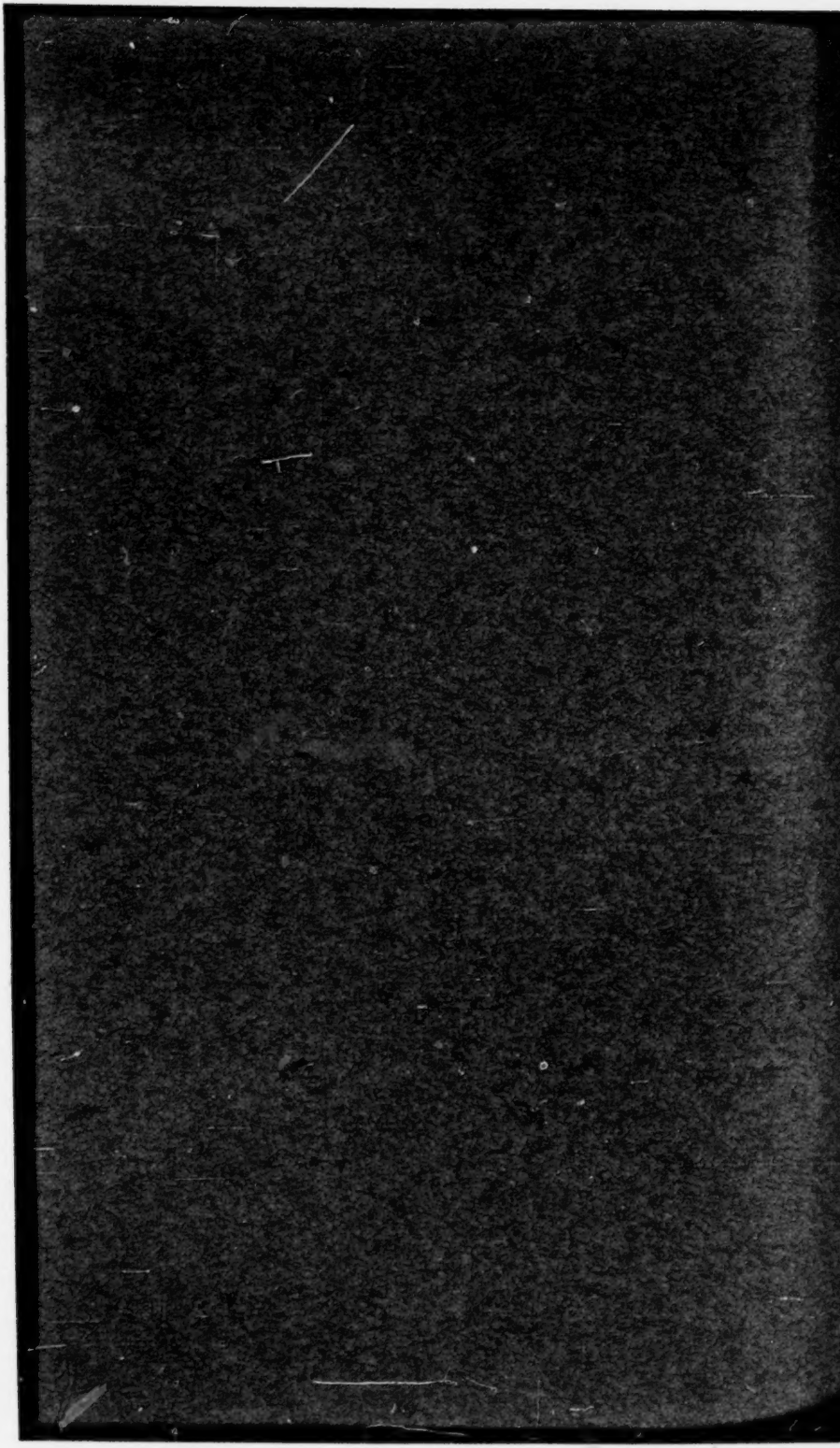

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United States Supreme Court

No. 847.

OCTOBER TERM, 1915.

WILLIAM N. McFARLAND,

Supervisor of Public Accounts of Louisiana, and Others,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

Appeal from the United States District Court, Eastern District of Louisiana, from Decree Granting Injunction.

Brief on Behalf of W. N. McFarland and Others, Appellants.

Statement of the Case.

Act 10 of the Extra Session of the Louisiana General Assembly of 1915 undertakes to regulate the business of refining sugar, for the purpose of curbing monopoly therein.

The Act contains a classification which exempts from its operation those refiners who plant and grow their own cane, and refine the sugar produced by them.

This exemption is objected to by the American Sugar Refining Company, the complainant herein, as denying the equal protection of the laws, under the Fourteenth Amendment, to those refiners who are not producers of sugar from cane, and who, alone, by reason of the classification in the act, are subjected to the regulation of their business.

The Act also contains a classification whereby a sugar refiner, who systematically pays, in Louisiana, a smaller price for raw sugar than he pays in any other State, is subjected to the rebuttable presumption that he is a monopolist or trade conspirator, and to other penalties. This classification is also objected to by the American Sugar Refining Company, in its complaint herein, as denying the equal protection of the laws, under the Fourteenth Amendment, to those sugar refiners who systematically pay smaller prices for raw sugar in Louisiana than they pay in other States.

The Pleadings: The Bill. The issues herein were raised upon a bill in equity filed by the American Sugar Refining Company, in the United States District Court for the Eastern District of Louisiana, applying for an injunction, under Article 266 of the Judicial Code, to prevent Act 10 of the General Assembly of Louisiana for 1915 being put into effect by the officials of the State of Louisiana, on the ground that the Act is unconstitutional, in the particulars mentioned above, and in other particulars.

The American Sugar Refining Company established its interest in the controversy by setting up that it was engaged in the business of refining sugar in the State of Louisiana; that it bought outright all the sugar it refined; and that, during the time the raw sugar produced in Louisiana was being sold, it bought its supplies of same for a smaller price than it customarily paid for raw sugar in other States.

The bill also sets up a number of other grounds of unconstitutionality against the Act, but, as they were passed over by the lower Court, those grounds of attack upon the Act require no attention at this time.

The bill also contained allegations, negativing, by implication, the declaration by the General Assembly, in Act 10, that the sugar refining business was monopolized. These allegations were, in substance: That the American Sugar Refining Company, already having a refinery in Louisiana, with a capacity for refining 2,500,000 pounds of sugar a day, had been "influenced by the economic and geographical advantages of New Orleans as a sugar refining point," to build, in the year 1909, another refinery with a capacity of 3,000,000 pounds a day, with the result that the company had too much refinery capacity, and kept one of the refineries idle and closed, to be used in case of accident to the other, although, at the time of filing the bill, its first refinery was "comparatively antiquated."

That the complainant usually bought only 47.43 per cent of the Louisiana crop of sugar.

That, "in recent years," since 1911, the complainant had not refined in Louisiana all the sugar bought there by it, but had shipped to its Northern refineries one-third of its purchases of sugar in Louisiana.

That the raw sugar produced in Louisiana is brought

to market during two months of the year, faster than the refineries can take it, with the result that the market price in Louisiana declines below the then current price of sugar in the ruling market at New York.

That the complainant has always paid the market price for sugar in Louisiana.

That the market for sugar in New York usually declines after the period when the sugar is sold in New Orleans, and that the decline measures the loss of the Louisiana refiner who buys, during the sugar-harvesting season, more sugar than he can refine and sell.

That, although complainant buys Louisiana raw sugar at less than the price of the same sugar in New York, at the same time, it has not profited thereby, owing to the cost of storage, insurance, etc., on the sugar bought and not immediately refined, and to other causes.

The bill prays that Act 10 of the Extra Session of the General Assembly of 1915 be declared unconstitutional and null, and for the issuance of a preliminary, and of a final, injunction against its enforcement.

The Answer. To this bill, the State officials charged with the enforcement of Act 10 filed an answer, in which they first challenged the right of the American Sugar Refining Company to come into a Court of Equity, on the ground that it came with unclean hands, by reason of the circumstance that the law in question was enacted to put an end to the corrupt practices in the business of refining sugar which said complainant had carried on for years; which it was carrying on at the time of the filing of the bill; and which the injunction it prayed for would charter and privilege it to continue carrying on in the future.

The allegation, that the complainant had come into court with unclean hands, was supported by a great deal of specification, which we omit here, and which we shall refer to later in the brief, in the argument on the point.

The answer met the charge, in the bill, that the classifications complained of were unreasonable, with the averment that the allegations of the petition were conclusions of law, which were denied.

Finally, the answer met those allegations in the bill which anticipated and negatived the charge that the complainant had, and exercised, a monopoly of the business of refining sugar, by saying, in substance:

That, although the complainant had had a perfectly good refinery in Louisiana, with a capacity for refining 2,500,000 pounds of sugar a day, it built its second refinery, with a capacity of 3,000,000 pounds, for the purpose of overawing all competition.

That the 2,500,000-pound refinery was kept on hand, idle, and was not sold, and was not offered for sale, because of complainant's design to use it as a menace to any proposed competition, and also to enable complainant to supply a larger territory with sugar from its refineries at other centers.

That there had been no changes in the process of refining since said 2,500,000-pound refinery was closed, and that there was no substantial ground for complainant's averment that said refinery was too antiquated to be operated economically, as partly appeared from complainant's contradictory averment that said refinery was kept on hand to be used in emergencies.

That complainant's allegation, that it purchased an average of only 47.43 per cent of the Louisiana sugar

crop, was misleading and deceptive, as about one-fourth of said crop was sold direct to the consumer, and that, as to that part of the crop made up into raw sugar, for sale to the refineries, complainant had generally bought 70 per cent of it, or more.

That the shipment of the Louisiana raw sugar to Northern refineries, as alleged by complainant, when so much refining capacity was idle in complainant's hands, was an unnatural diversion of trade, due to the illegitimate needs of complainant's monopoly.

That complainant's allegation that the Louisiana crop of sugar came to market faster than it could be refined, coupled with its admission that it has so much refinery capacity idle on its hands, was an admission that complainant has made the marketing of raw sugar difficult.

That the admitted lowering of the price of raw sugar by complainant was an admission that complainant had thrown all the disadvantages consequent upon the suppression of the refinery capacity at New Orleans upon the producers of raw sugar.

That the complainant was seeking, in asking for injunction in this case, to be allowed to continue throwing said disadvantages upon the producers of raw sugar.

The Answer Was Sworn to. The facts stated in the answer were established by affidavit. There was no denial by the complainant of any fact stated in the answer.

The Trial. The case was heard below by the District Judge, sitting with two other Federal Judges, as required by Act 266 of the Judicial Code, where a preliminary injunction is sought against the ex-

ecution of the statute of a State. The hearing was had upon the bill and answer.

The Judgment. The Court below decided that the statute was unconstitutional in its two classifications: that excluding from its operation sugar planters, refining the sugar from their own cane, and that raising a presumption of monopoly and trade conspiracy against refiners who buy sugar in Louisiana at a less price than they pay in other States.

The Appeal. From a judgment in the lower court annulling Act 10, on these grounds, and granting a preliminary injunction against its enenforcement, the State officials are prosecuting this appeal, under the provisions of Article 266 of the Judicial Code, providing that, in such cases, the appeal shall be to the Supreme Court, direct. In this Court, a motion was made by the State officials to advance the cause on the docket, and that motion was granted.

THE SPECIFICATION OF ERRORS.

In compliance with the rules of this Court, the following specification of errors has been filed:

> "1. The Court erred in failing to uphold the constitutionality and legality of Act No. 10 of the Extraordinary Session of the General Assembly of the State of Louisiana of 1915, and in holding and declaring that said Act 'is a case of arbitrary selection of those who are sought to be made the victims of the penalties it prescribed,' and further erred in holding that no 'fair reason for the law exists that would not require, with equal force, its extension to others whom it leaves untouched.'
>
> "2. The Court erred in holding that the Act in

question was arbitrary, and in holding that the Legislature unfairly selected certain persons engaged in the sugar trade and subjected them to its provisions, and distinguished them from others engaged in the same business.

"3. The Court erred in holding that the 'prime object of the statute is to prevent a very limited class of persons or corporations, engaged in the business of refining sugar in Louisiana, from systematically paying in Louisiana a less price for sugar than they pay in other States, and to force them into the practice of paying as much for sugar bought by them in that State as they pay in any other State, by subjecting their refineries to seizure and sale, and in holding that this provision is the heart of the statute, and that, if this provision be stricken out, the said statute is practically inoperative.'

"4. The Court erred in failing to uphold the constitutionality and legality of Section 15 of said Act as a reasonable classification by the Legislature to meet existing evils, and in holding that it could not conceive of any fair reason for enacting Section 15 of said Act, which provides 'that the business of refining sugar, within the meaning of this Act, is hereby defined to be that of any concern that buys and refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys and refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it,' and in holding that the effect of the enactment of said section was to arbitrarily exempt certain persons from the operation of the Act, while extending the privilege to others, in the particulars set out in the opinion handed down by the Court.

"5. The Court erred in holding that the effect of

Section 15, aforesaid, is to arbitrarily make one's ownership of property in Louisiana the test of the criminality of his conduct in buying a commodity in that State.

"6. That the Court erred in holding that said statute undertakes arbitrarily to prevent the practice of buying sugar in Louisiana for less than is paid elsewhere, only in case of certain buyers, leaving beyond the reach of the prohibition such other buyers whose situation and methods, in every respect, may be identical and equally harmful in their tendencies, and in failing to hold that the Legislature exercised a reasonable discretion in the classification as made.

"7. The Court erred in holding that the Act is invalid and unenforceable, on the ground that it discriminates 'between two buyers of a commodity of a State, which results in imputing criminality to the conduct of one of them in making his purchases if he owns property or carries on another business in the State, while exactly the same conduct of another is left free of such an imputation, though he owns the same kind of property, or is engaged in the same business, but not in the same place,' and in holding that said classification is not based on any difference between the conduct of the one and that of the other, and that those who are attempted to be subjected to the penal provisions of the Act are determined by an arbitrary selection only, without regard to any difference between their delinquency and that of others whom the statute leaves untouched, rendering the Act a denial of the equal protection of the law, and in failing to hold that the classification as made by the Legislature was just, fair and reasonable to meet existing and acute evils under the police power of the State.

"8. The Court erred in taking jurisdiction of this

cause, thus, in effect, permitting the complainant to come into a Court of Equity with unclean hands, because of the oppressive and illegal acts committed by it in connection with the subject-matter of the litigation fully alleged and shown, and not denied herein by complainant, and in failing to hold that the complainant, by its conduct and acts, and because of its unclean hands, had forfeited its right to go into a Court of Equity for the relief prayed for herein.

"9. The Court erred in not holding that, for the suppression of monopoly and other evils, it was competent in the Legislature to single out, for special treatment, sugar refiners who buy sugar in Louisiana and in other States, and who do not confine their operations to the refining of the sugar produced by themselves.

"10. The Court erred in holding that the whole Act was unconstitutional, and in not holding that the unconstitutional provisions, if any, were independent, and could be eliminated, leaving the balance of the Act intact and valid.

"11. The Court erred in holding that there was such a case of probable injury to the complainant, and of unconstitutionality in Act 10 of 1915, made out as to justify the issuance of injunction, **in limine**, against the enforcement of the Act."

ARGUMENT.

We confine this brief to consideration of the points which were passed upon in the lower court. The first of those points is whether the complainant can come into a Court of Equity, by reason of the uncleanness of its hands in the matter it is attempting to litigate.

The lower Court dismissed this point by saying:

Can One whose Continuing Conduct Has Necessitated the Enactment of a Police Regulation Come Into Equity to Assail That Regulation?

"The suggestion has been made that, even though the statute in question is an invalid one, a Court of Equity should not stay the enforcement of it against the plaintiff, because it comes into court with unclean hands, in that in its conduct of the business in which it is engaged it has been guilty of harmful and lawless practices. As the granting of the relief sought cannot be made the means of protecting the plaintiff from the consequences of any misconduct of which it may have been guilty or of enabling it in the future to do anything which it has not a right to do, we are not of opinion that the doors of a court of equity properly may be closed to the plaintiff because of some former delinquency on its part with reference to which the aid of the Court is not asked or given. The wrong of a plaintiff which may be invoked to defeat his claim to equitable relief must have an immediate and necessary relation to the equity for the enforcement of which he prays. Talbot vs. Independent Order of Owls, 220 Fed. 660."

The grounds here assigned for disregarding the unclean hands of the complainant may be stated under the following heads:

1. That the charge of unclean hands is predicated merely upon the fact that, in the conduct of the sugar refining business, the complainant has been "guilty of harmful and lawless practices."

2. That, to grant the relief prayed for (the annulment of the law regulating the business of sugar refining), does

not protect the plaintiff from the consequences of any misconduct of which it might have been guilty, nor aid it to carry on in the future those practices which the regulation of sugar refining was intended to prevent.

3. That the unclean hands of the complainant relate to a "former delinquency"; and proceed from the fact that it is not now, but merely "**has been** guilty of harmful and lawless practices."

4. That the facts constituting the unclean hands of the complainant have no "immediate and necessary relation" to the equity prayed for herein.

We take up these grounds for not applying the maxim concerning "unclean hands" seriatim:

> "1. That the charge of unclean hands is predicated merely upon the fact that, in the conduct of the sugar refining business, the complainant has been 'guilty of harmful and lawless practices.' "

In stating that the charge of unclean hands against the complainant related only to its business conduct, the Court below showed that it had not considered the real point of the charge against complainant, which was that its evil conduct in business had been the historical antecedent, and the actual groundwork for, Act 10.

In stating the case as it did, the Court stated it out of existence. No one will claim that mere evil conduct in business, of itself, prevents one, because of unclean hands, from attacking unconstitutional legislation.

It is a different case when evil conduct initiates and generates legislation. Such evil conduct then becomes part of the subject-matter with which the legislation deals. It is part of the legislation, historically, and in

fact; and any judicial review of the legislation would be incomplete and foreign which should omit consideration of its cause and embryo.

2. The next ground for disregarding the unclean hands of the complainant, in granting the injunction, was:

> "That, to grant the relief prayed for (the annulment of the law regulating the business of sugar refining), does not protect the plaintiff from the consequences of any misconduct of which it might have been guilty, nor aid it to carry on in the future those practices which the regulation of sugar refining was intended to prevent."

In assigning this reason for enjoining the enforcement of the law for regulating the business or refining sugar, the Court below falls into the error, first, of confusing the writ of injunction with the status which it is to affect and protect.

On the theory that an injunction protects nothing unlawful, the writ could not be denied in any case! That is the theory contained in the above words: "The granting of the relief sought cannot be the means of protecting the plaintiff from the consequences of any misconduct of which it may have been guilty." The error here is to impart the purity and the rightfulness of the Court's process to the status which the complainant succeeds in preserving under the shelter of that process.

In other words, the fiction of the impossibility of wrong proceeding from right, or being sheltered by right, is here unmistakably revived; and no more flourishing harvest of oppressions ever grew up under the maxim, "The King can do no wrong," than will gather, and are

here present, under such a maxim as "Injunction can do no wrong."

It was deemed necessary by the Legislature to regulate the business of refining sugar for the prevention of monopoly. Is it within the province of the judiciary to step in, and say that the regulation of that business is not necessary for the prevention of monopoly?

Reasoning in the same way as to the future, the Court falls, in this branch of its opinion, into the error, second, of idealizing its injunction so that it will not enable the complainant "to do anything which it has not a right to do."

Here, again, the legislative discretion comes into conflict with the judicial conviction of the impossibility of wrong-doing under judicial process; for, after the Legislature has said that it is necessary to regulate the business of refining sugar, for the suppression of monopoly, what is it but a negation of that necessity for the judiciary to say that the regulation of the business may be suspended, without any danger from monopoly?

To say that the injunction against regulating the business of refining sugar does not specifically authorize wrong-doing in the future, and that it may, therefore, issue without harm utterly ignores the legislative declaration that there is an existing evil, which will continue, if the business in question is not regulated.

The police power is stripped of all meaning or efficacy by this ruling. "As to what has been done," the Court says, in substance, "the police power may as well be suspended, for the suspension of this police regulation by injunction does not protect the offender from the consequences of any past misconduct; and, as to what may be

done in the future, to suspend the police regulation by injunction does not authorize the offender to do anything which he has not the right to do."

3. The next ground given in the opinion below for the granting of the injunction to an applicant charged with unclean hands was the following:

> "That the unclean hands of the complainant relate to a 'former delinquency'; and proceed from the fact that it is not now, but merely **'has been** guilty of harmful and lawless practices.' "

The Court below here treats the whole charge of unclean hands as something relating to the past.

That was not the charge. The charge was that the past unclean dealings of the complainant were being repeated in the present, and were being perpetuated for the future; and that, as to the past, the complainant's conduct was the historical cause of Act 10.

There was not the slightest attempt to build up the charge of unclean hands on purely ancient history, as the above passage from the opinion of the Court below would indicate.

The complainant had monopolized the sugar refining business in the past, and had used that monopoly to fix the price of the raw sugar it bought in Louisiana at its own figure, until the process had nearly bankrupted the producers of raw sugar in Louisiana.

That monopoly existed on the day the complainant filed this application to enjoin the law regulating the business of refining sugar; and that process of bankrupting the producers of raw sugar in the State was in progress on that day.

On the day the Court below handed down its decision in this case, that monopoly was in existence, and that process of price manipulation was going on.

They are going on to-day; and the record shows they will continue to go on for the future, if the law regulating the business of refining sugar is not enforced.

Where, then, is the foundation for the assertion in the opinion, quoted above, that the complainant's delinquency and its harmful and lawless practices belong altogether to the past?

Here are the facts, as they are set forth, without any denial by the complainant, in the sworn answer of the defendants in this case:

> "The complainant was organized, and has continuously been, and is now being conducted, as a monopoly, combination and conspiracy in restraint of trade and commerce in the business of buying, refining and selling sugar throughout the United States, and, in particular, said monopoly having given, and now giving it, practically complete control of the sugar trade in Louisiana, it has continuously used, and is yet using, the same to plunder the producers of raw sugar in said State, by fixing the price at which it buys raw sugar in said State at an arbitrary sliding differential below the true value thereof in the markets of the world; said differential being such as to result in a loss of several million dollars a year to the producers of raw sugar in said State, in favor of complainant and of the few minor independent buyers of sugar it has chosen not to eliminate from the trade, while refined sugar is sold at the same price in New Orleans as in New York." Record, p. 25.

Then follows the averment that the complainant's monopoly was directed and managed by one J. T. Wither-

spoon, he "being still engaged in conducting said business with the same effect upon the price of raw sugar" as that shown in certain records and correspondence which are set out at length in the answer. Record, p. 26.

Those records and that correspondence are quoted, for the purpose of showing how the business is being conducted now, and how it will be conducted in the future, if not regulated by law. They were not quoted for the sole purpose of setting forth what the past of the complainant had been, as the opinion would indicate.

Then follows, in the record, an averment, showing how the monopoly and its evils having continued, the Legislative Department of the State Government attempted to break it up:

> "Complainant's monopoly having continued in the State, under the same conditions, in the same fashion, under the same management, and with the same results, as before the disclosures of 1912, mentioned hereinabove, the Louisiana Constitutional Convention of 1913, which was assembled for narrowly limited purposes, amended Article 190 of the Constitution, same being one of the few Articles of said Constitution changed by said Convention, said amendment being written with a special view to protecting the sugar industry in Louisiana from the illegal practices of complainant; and with the same special view to protecting said Louisiana sugar industry from the said illegal practices of complainant, the General Assembly of Louisiana, for 1914, adopted Act 288 of 1914, containing the provision, objected to by complainant in its advertisement quoted in the next paragraph hereof, as to the systematic buying of products in Louisiana at a lower price than the same purchaser pays in other States. All these efforts, and those subsequently made by the Legislative and Executive

Departments of the Government of Louisiana, and particularly that made in the law complained of herein, were made because of the great enfeeblement of said industry, under complainant's oppressions, and under other misfortunes; and any injunction given complainant herein will continue the enslavement and the impoverishment of said industry under complainant's monopoly." Record, p. 71.

The continuing conditions which led to the enactment of the law which has been enjoined are thus exhibited in the record:

"* * * the Governor called the Legislature in special session, for the purpose of enacting laws for the regulation, investigation and suppression of trusts and monopolies, in general, and for the regulation of the sugar refining business in particular; and, in his message to the General Assembly, he set forth that the history and the present oppressions of the complainant made such legislation necessary, as follows, to-wit:

"'May 17th, 1915.

"'To the General Assembly of the State of Louisiana:

"'Gentlemen—The purposes for which you have been called in extraordinary session are indicated by the proclamation, and it is not deemed necessary to elaborate them in detail.

* * * * * * * *

"'Your attention is invited to the paragraph in the proclamation convening you in extraordinary sessions which reads as follows:

"'"To enact legislation effectively to protect trade and commerce against monopoly and other unlawful combinations, agreement and conspiracies in restraint of trade; to provide adequate remedies and-

prescribe the mode and method of procedure, to prescribe penalties and forfeitures, and generally to do in relation to the subject-matter what may be deemed necessary."

" 'Generally speaking there should be effective laws to protect the people against unlawful combinations and conspiracies in restraint of trade. But there is special and immediate need for such legislation to safeguard and protect the interests of thousands of people who are engaged in agricultural pursuits. **The future progress and material welfare of the State depends upon the prosperity of its farmers. They cannot be successful if the State, through inaction, tolerates and thus promotes such combinations and conspiracies as to rob them of the fruits of their toil.**

" 'The situation that confronts the people engaged in the production of sugar and the efforts made to protect that industry against threatened ruin are well known. Notwithstanding the protective duty levied by the Federal Government on imported sugars, the sugar industry of the State has been gradually declining until it has reached a state of prostration. **This condition resulted from the unlawful operations within the State of the American Sugar Refining Company and its allied interests, which had in effect reduced the producers of sugar to a condition of serfdom.**

" 'Proceedings were instituted to curb the rapacity of the "trust" or force it to leave the State. **Its response has been an arrogant defiance of our State laws, and now, apparently with confident belief in its power, it has impudently given notice to the people of the State that it will send its paid representatives here to prevent the representatives of the people from enacting such legislation as may be needed to drive it from its prey upon which it has been feast-**

ing for so many years. If a somewhat similar condition does not exist as to other agricultural industries, it is liable to arise unless effective measures are adopted.

" 'It was to be anticipated that any effort to secure adequate and effective legislation for the special purposes indicated would be followed by the usual argument that capital will be deterred from seeking investment in the State. **There would be as much reason to argue against the enactment of more stringent laws against larceny on the ground that such legislation would prevent people from coming into the State to make their homes. We do not need the capital that might come for the purpose of robbing the people any more than we need and desire the immigration of thieves.**

" 'The State of Louisiana has never been unfair in its treatment of capital, and there is no ground even for a suggestion that its policy will be different in that regard in the future. Its policy has always been and will continue to be sane and liberal. The legitimate operations of capital have been and will always be promoted and assisted in every way possible. Even the American Sugar Refining Company has no just cause of complaint. It has been left undisturbed for many years during which it has been doing business in the State, and **the controversy with it arose only when it insolently refused to deal justly and fairly with the thousands of the people of the State engaged in the production of sugar.**

" 'It must be borne in mind that the agricultural activities of the State represent an investment by our people of hundreds of millions of dollars. It is productive capital. The material welfare of the State and the prosperity of all our people are dependent directly and indirectly upon its avails. On the other hand, there is, or in any event will be, comparatively

a small amount of unproductive capital invested in such concerns as may oppress our agricultural interests. To fail adequately to protect the large and vital interests through an unwarranted fear that legitimate capital might be frightened would be nothing short of a crime.

* * * * * * * *

"'As to the other matters submitted for your consideration, I beg, in lieu of special reference to them, to invite your attention to the proclamation convening you in extraordinary session.

"'All must realize, I am sure, that the people of the State can receive the service which they have a right to expect of your honorable body only when all personal and political considerations are for the time laid aside. I am pleased to believe that you will agree with me that you should rise to that high plane in considering and endeavoring to solve the problems which face you. Respectfully,

"'L. E. HALL, Governor.'

"Whereupon the General Assembly enacted a general Anti-Trust Law, and a law for the investigation of trusts, and the law which complainant attacks herein.". Record, p. 73-75.

The history of Act 10 is summarized as follows in the record, at page 76:

"* * * due to the conviction in the public mind that immorality such as complainant had betrayed and was betraying, and was holding out the prospect of continuing, in business, could not be tolerated, the regulation of the sugar refining business was undertaken by the General Assembly of the State of Louisiana, at said specially convened session of the General Assembly, in the law attacked in this bill."

To decide the issue of unclean hands on the "**FORMER** delinquency," or upon "the harmful and lawless practices" of which the complainant "**HAS BEEN guilty,**" is to decide some other case than the one at bar. To decide this case, it is necessary to consider whether **an existing and continuing** delinquency with regard to the subject matter of the litigation constitutes a case of unclean hands, upon the part of a complainant in equity.

4. The next ground for overruling the plea that the complainant could not have equitable relief because of its unclean hands was thus stated in the opinion below:

> "That the facts constituting the unclean hands of the complainant have no 'immediate and necessary relation' to the equity prayed for herein."

If there is no connection between the disease, and the remedy for it; if there is no connection between cause and effect, the above conclusion is correct.

The refusal of a Court of Equity to divide the spoils of the highwaymen upon Blackheath is the commonest illustration of the attitude of an Equity Court toward those who enter it with unclean hands.

That same familiar illustration will serve here.

If there had been no statute dealing with that important trade upon Blackheath, could those, whose activities had called forth a statute against robbery, be entitled to any equitable relief against such a statute? Could they urge that there was "no immediate and necessary relation" between their operations upon Blackheath, and the statute called into existence by such operations?

We have shown how the enactment of Act 10 was a consequence of the unclean doings of the complainant in the

sugar trade in Louisiana; hence the question comes up squarely, Can one whose misconduct called forth a special session of the Legislature, and a special exercise of the police power, be regarded, in a Court of Equity, as having hands clean enough for assailing the police regulation with which society is defending itself against him?

The Court below cited **Talbot vs. Independent Order of Owls, 220 Fed. 660,** as supporting its view. The inapplicability of that case will appear from the following statement by the Court of the issue there:

> "The equity which the plaintiffs are endeavoring to enforce is the prevention of the fraudulent use by the defendants and their rival organization of a name and an emblem so similar to those of the Order of Owls that they are calculated to create confusion between the two organizations and to induce strangers to deal with the junior body in the belief that it is the senior one. The iniquity the defendants seek to present for the purpose of defeating the plaintiffs' recovery has no necessary or other relation to that equity. Even if all the iniquity charged were proved, there is no evidence in this record that any of it induced or in any way affected the unlawful action of the defendants in their use of the name or emblem they adopted for the evident purpose of appropriating to themselves the reputation and prestige of the Order of Owls. That alleged iniquity consisted of claimed personal delinquencies of John W. Talbot in his relations with strangers to both organizations and in his relation to the Order of Owls, concerning which the defendants, a rival organization and its members, have no warrant to call him or the Order of Owls to account."

To say that there is no relation between the equity de-

manded, and the iniquity done, is to say that the maxim in question can never apply where injunction is sought against the enforcement of a statute; for it can be said, always, with as much truth as here, that there is no connection between a party's misconduct and a statute enacted as the antidote for it. Therefore, the question becomes, is it true that one may misconduct himself until the outgrowth of his misconduct is repressive legislation, and still preserve his right to go into equity, as with clean hands, to equitably assail the legislation he has iniquitously generated? To hold this would be to hold that one cannot forfeit, by the uncleanness of his hands, in any case, his right to go into equity to impeach legislation which may injure him, although he may easily forfeit his right to so impeach private wrong which may injure him.

Equity refuses, on its own account, to take cognizance of certain tainted causes.

Equity disregards, in such causes, the legal status, out of regard for its own character and fame.

If, in any cause, equity can disregard the legal status, why may it not do so, under like compulsion, in any other cause?

The question here is one of legal status. That was the question at stake in all the other equity causes where the doors of the court have been closed to a complainant with unclean hands.

There is nothing so peculiarly exceptional or sacramental about the issue here as to require that equity adjudge it, regardless of the uncleanness of the hands of the complainant.

A recent case in point is that of **National Merchandise Co. vs. Keating, 218 Fed. 479.**

There, the complainant sought to enjoin the "blue sky" law of the State of Montana as unconstitutional, but the Court refused to pass upon the issue, because it found that the complainant's business system was one of systematic fraudulency. In dismissing the bill, the Court (Bourquin, District Judge) said:

> "That this corporation is designed to profit its owners at the expense of victims enticed by pseudo promises and deceptive prospects, seems clear. Therein, a Court of Equity—of conscience—will give no aid. Those appealing to equity to restrain the trespasses of others must themselves be free from imputation. If the right they assert is to do iniquity, they cannot have equity. Equity interferes in behalf of righteous dealing only, and not to further schemes of questionable morality calculated to deceive the public. Otherwise it would do violence to its principles, work injustice, and forfeit respect. The strong arm of equity—injunction—is cautiously exercised, when plaintiff's right is not doubtful, but clear and certain, and when, upon broad consideration of all the circumstances, good conscience requires it. All this is settled law since the classic case wherein one highwayman of two operating upon Blackheath near London came into chancery for an accounting of profits accruing from their villainy. In this view of the case, it is unnecessary to consider the attack upon the constitutionality of the State's 'blue sky law,' for in no event is plaintiff entitled to the relief sought."

Another case of like character is that of **Danciger vs. Stone, 187 Federal Reporter, 853** (Circuit Court, Eastern

District of Oklahoma, Campbell, Dist. Judge), where the complainant sought to enjoin a near-prohibition law of Oklahoma, as interfering with interstate commerce. As the shipments the complainant was endeavoring to protect in this way had been obtained by illegal advertisements soliciting orders for the liquor, it was held that equity would apply its maxim concerning "unclean hands," and would not take cognizance of the cause. In disposing of the same question which is raised here, as to the maxim being inapplicable because the wrong-doing did not affect the immediate defendant, the Court said:

> "With regard to cases like this, where the defendant in the suit where the maxim is invoked is in no way affected by the wrong doing, it is said:
>
> " 'But we have already seen that relief has been refused in many cases where the defendant was not concerned, either as victim or participant in plaintiff's misconduct, but where the granting of relief would permit plaintiff, sometimes very indirectly, to gain an advantage through a wrong perpetuated against a third person or against the public. The maxim itself affects the equitable relations between the parties where plaintiff's misconduct is in any way involved in the subject-matter of litigation. * * * Finally, it has been said that the maxim refers only to wilful misconduct, but this can mean no more than free and deliberate action with knowledge of the facts. It does not require consciousness of the illegal or immoral nature of the act.' 16 Cyc. 148."

If we are correct in what has been said above, and if the complainant's hands are unclean, it is entitled to no relief here. We shall then examine, briefly, whether the complainant's hands are, in fact, unclean.

Are the Hands of the Complainant Unclean?

The general outlines of the case of "unclean hands" against the complainant have already been set out, in the foregoing discussion. Much detail on the subject is given in the defendant's sworn and undenied answer, at pages 27 to 62 of the record. We shall not burden this brief with all of that detail, and shall merely give such little of it as may be illustrative.

We ought to say, besides, that nowhere has the complainant entered any kind of denial of the grave impeachment against it contained in this charge, and that we do not anticipate any denial, on the facts, in this court. There was no intimation of any such denial in the court below, and it can be properly said, as part of the legislative history of Act 10, that, when the Legislature of Louisiana was considering the bill which became Act 10, substantially all the facts set forth in the answer, and many of the letters therein appearing, were before the Legislature, and that complainant, whose authorized representatives were in constant attendance at the legislative sessions, made then no denial, of any kind, as to such facts or letters.

What the complainant did to acquire its "unclean hands" was, in brief, this:

It combined under its one ownership all refineries which handled, or competed for, the raw sugar in Louisiana.

It instituted a conspiracy to prevent the building of other refineries to handle, or compete for, the said sugar.

It then took advantage of its being the sole buyer of the said sugar to put the price thereof down far below the contemporaneous value thereof in the ruling market at

New York, while it sold its refined sugar at the same price as it did in New York.

It then took advantage of its control of the sugar trade to discourage the producers of said sugar in Louisiana from making up their sugar into grades that might be sold direct to grocers, this being done by causing the price of such grocery grades of sugar to drop when same was about to be sold.

It then took advantage of the dependence of the sugar brokers upon its custom to compel them to give up the handling of the grocery grades of Louisiana sugar, which competed with its refined sugar.

It then took advantage of the dependence of the producers of raw sugar, during the harvesting season, to boycott them if they sold to other refiners who might chance to come to Louisiana from elsewhere, thereby discouraging the permanent coming in of any such chance buyers.

These few expressions in communications from one manager to another, relating to complainant's business in Louisiana, are selected from throughout the record to show how this monopoly was maintained and enjoyed:

Expressions from Complainant's Officers and Managers Indicating How Complainant Maintained its Monopoly.

"You had better have some representative present at all the meetings bearing upon the consolidation of planters or possible erection of a refinery." Record, p. 30.

"A great many of my friends have at different times approached me in connection with this matter [the establishment of a planters' co-operative re-

finery], and I have simply stated to them that the American Sugar Company is a fixture in New Orleans, and prepared to maintain its supremacy, regardless of costs or consequences." Record, p. 32.

"By threats to severely let alone those brokers who would sell him [a chance independent buyer], we succeeded to-day in preventing his buying anything." Record, p. 37.

"Now that sugar is selling at a comparatively low price, if any large handlers should break away for the sale of a paltry 1/32 or so, after the interloper leaves, and no longer becomes a buyer, it will be a case of the 'devil take the hindmost.'" Record, p. 38.

"John S. Seymour * * * endeavored to secure some lots at 1/32 over. But for the suspected reasons outlined in some of my former letters, brokers could not summon courage to accept such a small advance." Record, p. 39.

"I don't think that the outside refineries will be able to secure many sugars, * * * as we can keep an eye on such offerings and stop any large purchases being made." Record, p. 40.

"You will need to buy everything you can, and keep out competitors." Record, p. 41.

"The Sugarlands refinery has been driven out of the State of Texas by us." Record, p. 66.

"The higher we hold our prices for granulated sugar * * * the more money these plantations will make. * * * It might be well for you

* * * to maintain a difference [in New Orleans] below New York of at least ten cents, and at periods of extreme dullness, when these outsiders here are quoting low prices and selling their product;— of even twenty cents per hundred pounds." Record, p. 51.

Expressions from Complainant's Officers and Managers Indicating How Complainant Enjoyed Its Monopoly.

"I heard a reliable rumor that * * * Arbuckle was negotiating here for one or two cargoes of raw sugars. Promptly upon hearing this, I wired Mr. Havemeyer, and asked if he had any objections." Record, p. 39.

"Commencing with the latter part of next week, the daily arrivals here account of contracts already made will be large. These contracts, as you know, will be settled at a differential under the New York price day of arrival. Hence it behooves you to depress the New York market as much as possible, for the lower the New York quotation is the less these sugars will cost us." Record, p. 42.

"If the heavy purchases by outsiders continue, I hardly think we will be able to secure sufficient sugars to commence melting by the 10th on the 3/8 basis. If it is desired that we resume melting as early as possible, it will be necessary for you to authorize me the same as last year, namely, to secure supplies sufficient to melt and run interruptedly at the best price possible, and after accumulating a small surplus, then commence bearing the market down to the usual figures under the New York value." Record, p. 43.

"In regard to the raw sugar end of the business, what we are after, of course, ultimately, is the margin

between raw and refined. It arouses much less opposition and occasions much less talk if the price on raw sugar is depressed, than if the price of refined is advanced." Record, p. 46.

Injunction Would Protect Fruit of This Wrongdoing.

The fruit of all these acts was monopoly. Act 10 was the remedy for that monopoly. With Act 10 enjoined, the monopoly goes on, unchecked, and the fruits thereof are enjoyed, daily. As the Court observed, in **Danciger vs. Stone, 187 Fed. 862**, equity cannot be asked to protect that which is confessedly the fruit of wrongdoing.

General Precedents.

In **Delaware, L. & W. R. R. Co. vs. Frank, 110 Fed. 689** (Circuit Court, Western District of New York, Hazel, District Judge), a railroad issuing tickets under an arrangement with another railroad, which amounted to a violation of the Federal Anti-Trust Law, was held to be debarred, by its "unclean hands," from obtaining an injunction against "ticket scalpers," who were unlawfully dealing in the tickets so issued.

In **American Biscuit Mfg. Co. vs. Klotz, 44 Fed. 725** (Circuit Court, Eastern District of Louisiana, Pardee and Billings, JJ.), a company which had been organized to monopolize the bakery business was held not entitled to a receivership over one of its branch establishments, on the ground stated in the following quotation from the opinion, **per curiam:**

"The offense is defined to 'combine in the form of trust, or otherwise, in restraint of trade or commerce,'

and 'to monopolize, or attempt to monopolize, any of the trade or commerce.' **To compass either of these things with no other motive than to compass them, and by any means, constitutes the offense.** * * *' Does not this corporation, thus glutted with the thirty-five industries of twelve States, disclose an 'attempt to monopolize'? So far, therefore, as the complainant's business is a combination in restraint of trade, or is an 'attempt to monopolize, or combine, in the form of a trust, or otherwise, any part of trade or commerce,' as these words are properly defined, the law stamps it as unlawful, and the Courts could not encourage it. Aside from this, the complainant's business, **even if lawful,** being of the kind shown above, **is not of that meritorious kind that it should be encouraged by a court of equity.** The appointment of a receiver by a court of equity is not a matter of strict right, but of judicial discretion. (Fosdick vs. Schall, 99 U. S. 235.) It falls within that class of interlocutory remedies which Courts must grant or withhold, according to a discretion conscientiously exercised, upon a consideration of all the facts which the cause presents involving the rights of the parties **and the interests of the public. The attempt to accumulate in the hands of a single organization the business of supplying bread itself to so large a portion of the poor, as well as the rich, people of the United States should not be favored by a court of equity. It carries with it too much danger of excluding healthy competition,** thereby increasing the difficulty to the general public of participating in a most useful business, as well as adding to the possibility of multitudes of citizens being temporarily, at least, compelled to pay an arbitrary and high price for daily food."

In **McConnell vs. Camors-McConnell Company, 152 Fed. 332** (C. C. A., Fifth Circuit, Pardee, McCormack and

Shelby, JJ.), it was disclosed that a contract for the sale of a business was in violation of the Anti-Trust Act, and an injunction to enforce it was denied. Speaking of the necessity of applying the maxim in question against violators of the Anti-Trust Law, in such cases, and thereby saving the law courts from the burden of direct litigation, the Court said, through Judge McCormack:

> "These parties are wonderfully strong. Age does not impair their strength. They perennially recruit it from the highest ranks of the legal profession, with veteran experts in strategy and tactics, both grand and elementary. There are necessary delays in litigation, inherent weaknesses in its best machinery, obstructions will supervene, and all these elements are capitalized to the last extent of their earning capacity by these highly organized unnatural persons, who decide and act with the promptness and prescience of the most superior human intellect. Direct proceedings of the State are overtaxed. The Courts, especially in courts of equity, should not pose always as the fabled goddess, but keep an eye single to these exigent conditions and aid the State, as they rightly may, by withholding help or grace from graceless and hurtful dealings."

The sweep of the maxim, under which those with "unclean hands" are turned away from equity, is very great. Though the denial of relief may subject one, within the grasp of the maxim, to hardship—to cheating—even to violence—it makes no difference. As this Court said, in **Wheeler vs. Sage, 1 Wall. 518:**

> "If a party seeks relief in equity, he must be able to show that, on his part, there has been honesty and fair dealing. If he has been engaged in an illegal

business, and has been cheated, equity will not help him."

As this Court said, again, in **Bartle vs. Nutt, 4 Peters, 184:**

> "The law leaves the parties to such a contract as it found them. If either has sustained a loss by the bad faith of the **particeps criminis**, it is but a just infliction for the premeditated and deeply practiced fraud. **He must not expect that a judicial tribunal will degrade itself by an exertion of its powers to shift the loss from one to the other, or to equalize the benefits or burdens which may have resulted from the violation of every principle of morals and of law."**

In **Pittsburg Railroad Company vs. Crothersville, 59 Ind. 330 (64 N. E. 914)**, the Court went so far as to hold:

> "Plaintiff, maintaining a public nuisance, cannot have the aid of equity to restrain defendant from abating it, **although defendant has no authority to abate it."**

In **Deweese vs. Reinhard, 165 U. S. 386**, the extent of the rule was thus described:

> "A court of equity acts only when and as conscience commands; and if the conduct of the plaintiff be offensive to the dictates of natural justice, then **whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity."**

The Public Interest.

For an injunction to issue, in order that a monopolist may continue to ply his trade, goes counter to every idea of justice. As stated in **Foster's Federal Practice, 5th Ed., Section 285:**

"An injunction will not issue in the maintenance of a monopoly injurious to public policy; nor in any other case when its operation would be repugnant to public policy."

The same principle is found in **Anon. Cary, 12, Chitty's Index, Vol. 4, p. 3867:**

"Equity will not enforce that which is the cause of public inconvenience."

On the same line is **Hanauer vs. Doane, 2 Wall. 349:**

"It is certainly contrary to public policy to give aid of the Courts to a vendor who knew that his goods were purchased, or to a lender who knew that his money was borrowed, **for the purpose of being employed in the commission of a criminal act, injurious to society or to any of its members.**"

Equity Will Not Lend Itself to the Perpetuation of an Unjust Advantage.

The continuance of complainant's monopoly, unregulated and unchecked by Act 10, will be the necessary and direct result of the injunction prayed for here. As to that aspect of the case, it is laid down in **Cyc., Vol. 16, p. 148:**

"But we have already seen that the relief has been refused in many cases where defendant was not concerned either as victim or as participant in plaintiff's misconduct, but **where the granting of relief would permit plaintiff, sometimes very indirectly, to gain an advantage through a wrong prepetrated against a third person or against the public.**"

This principle is thus stated in **Larschied vs. Hashek Mfg. Co., 142 Wis. 172 (125 N. W. Rep. 442):**

"The exclusion of plaintiff from the peculiar favors of equity results equally where his conduct has been unconscionable by reason of a bad motive, **as where the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others.**"

In **Sanders vs. Cauley, 52 Texas Civil Appeals 261 (113 S. W. 560)**, the principle is again found:

"A court of equity never aids in the commission of a wrong, nor in protecting or preserving an unjust advantage wrongfully obtained."

Equity Not Bound by Forms in Passing on the Question of "Unclean Hands."

It is not important to inquire whether the facts showing unclean hands appear from the face of the papers, or from matters aliunde. As stated in **Chute vs. Wisconsin Chemical Company, 185 Fed. 118:**

"Equity is supposed to guard the portals of her jurisdiction jealously. No cause of action will be proceeded with which has become infected with fraud or other iniquity, **it matters not when or how the facts are brought to the attention of the Court.**"

In **Creamer vs. Bivert, 214 Mo. 473 (113 S. W. 1118)**, it was held that the application of this maxim "does not depend upon the averments of the pleadings or the wish of counsel, but may be invoked **ex mero motu** by the Court. In **Moring vs. Privott, 60 S. E. 509 (N. C. 554)**, it was said that equity would disregard forms, and examine the substance; and in **U. S. vs. Workingmen's Amalgamated Council, 54 Fed. 994**, it was said that, in passing upon an

application for a preliminary injunction, the Court would take cognizance of newspaper interviews, proclamations by the Governor, and the like.

Can Sugar Planters Be Exempted from the Regulation of Sugar Refining, Under the "Equal Protection" Clause of the Constitution?

Both the terms of Act 10, and its history, establish that the object of the Legislature, in passing it, was to minimize the evil of monopoly in the business of refining sugar. To invalidate the statute on the ground that the sugar planters are exempted, the classification must be devoid of basis in reason and in economics. We find, to the contrary, that it would be altogether unreasonable and idle to bring the sugar planters within the scheme of regulation.

This Court, like all other Courts, takes cognizance of the legislative history of a statute before it; but, even without cognizance of the history of Act 10, your Honors have, in the record before you, a mass of evidence to establish that the sugar planters are the victims of the monopoly in the sugar refining business, and are not, in any way, principals or conspirators in such monopoly. Besides, their business, as we presume this Court will notice, as part of the status which the Legislature dealt with, touches only slightly and incidentally the refining side, so that, in fact, they do not belong to the sphere of the sugar refiner. It is significant that the American Sugar Refining Company's bill herein is totally devoid of any description of the business of those whom it claims are unconstitutionally exempted from the operation of Act 10. It might, with as much reason as is urged here, be

set up that Act 10 denies the equal protection of the laws by failing to include weavers, or drovers, or tanners.

The opinion of the Court below does not give any explanation why it is unreasonable to classify all the real sugar refiners together, and all the real sugar planters separately from the refiners. We say, without any fear of contradiction, that no such explanation can be found in any correct description of either business. The refiners buy raw sugar, and refine it; the planters produce their own raw sugar, and sometimes put some of it through a process of quasi-refining. All who are engaged in the sugar refining business, proper, are included within Act 10; and for the judiciary to say that the classification of the Act is unreasonable because it does not include the producers of their own sugar, is to say that the business of refining sugar cannot be regulated without foisting into it some other business than that of refining sugar.

That there may be carried into the law a recognition of the different basis on which a producer stands, in an industry, is shown by the recent case of **St. John vs. New York, 201 U. S. 633 (50 L. Ed. 897)**, where it was said, through Mr. Justice McKenna:

> "It is not contended that such purpose is not within the power of the State, but it is contended that the power is not exercised on all alike to stand in the same relation to that purpose, and quite dramatic illustrations are used to show discrimination. A picture is exhibited of producing and non-producing vendors selling milk side by side; the latter, it may be, a purchaser from the former; the act of one permitted, the act of the other prohibited or penalized. If we could look no farther than the mere act of selling, the injustice of the law might be demonstrated;

but something more must be considered. Not only the final purpose of the law must be considered, but the means of its administration—the ways it may be defeated. Legislation, to be practical and efficient, must regard the special purpose as well as the ultimate purpose. The ultimate purpose is that wholesome milk shall reach the consumer, and it is the conception of the law that milk below a certain strength is not wholesome, but a difference is made between milk naturally deficient and milk made so by dilution. It is not for us to say that this is not a proper difference, * * *."

In **Cox vs. Texas, 202 U. S. 446 (50 L. Ed. 1011)**, the considerations which governed the above decision are encountered again. There, although admitting that a statute discriminated against the sellers of wine, by exempting the producers of wine from a classification, the Court held the regulatory Act good.

What the Court said, in **Keokee Coke Company vs. Taylor, 234 U. S. 224 (58 L. Ed. 1288)**, which we quote from more fully elsewhere, upholding a classification "aimed at what is deemed an evil, and hitting it where experience shows it to be most felt," should, in our opinion, be controlling and conclusive upon this point.

In adopting this classification in Act 10, the Legislature of Louisiana was guided by the approval of an identical classification in **American Sugar Refining Company vs. Louisiana, 179 U. S. 89**, where, upon objection that a license tax upon sugar refiners was discriminatory because exempting the sugar planters, this Court said, through Mr. Justice Brown:

"In Pacific Exp. Co. vs. Seibert, 142 U. S. 339 (35 L. Ed. 1025; 3 Inters Com. Tep. 810; 12 Sup. Ct. 250), a State statute defining an express company to be

such as carried on the business of transportation on contracts for hire with railroad or steamboat companies, did not invidiously discriminate against the express companies defined by it, by exempting other companies carrying express matter in vehicles of their own. This case is specially pertinent to the one under consideration. See, also, Giozza vs. Tiernan, 148 U. S. 657 (37 L. Ed. 599; 13 Sup Ct. Rep. 721); Columbus Southern R. Co. vs. Wright, 151 U. S. 470 (38 L. Ed. 238; 14 Sup. Ct. Rep. 396); Duncan vs. Missouri, 152 U. S. 377 (38 L. Ed. 485; 14 Sup. Ct. Rep. 570); Western U. Teleg. Co. vs. Indiana, 165 U. S. 304 (41 L. Ed. 725; 17 Sup. Ct. Rep. 345); Adams Exp. Co. vs. Ohio State Auditor, 165 U. S. 194 (41 L. Ed. 683; 17 Sup. Ct. Rep. 305).

"The Constitution of Louisiana classifies the refiners of sugar for the purpose of taxation into those who refine the produce of their own plantations, and those who engage in a general refining business, and refine sugars purchased by themselves or put in their hands by others for that purpose, imposing a tax only upon the latter class. To entitle a party to the exemption, it must appear (1) that he is a farmer or a planter; (2) that he grinds the cane as well as refines the sugar and molasses; (3) that he refines his own sugar and molasses, meaning thereby the product of his own plantation. Whether he may also refine the sugar of others may be open to question; although by its express terms the Act does not apply to planters who granulate syrup for other planters during the rolling season. The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

The Court said, in another passage:

"* * * from time out of mind it has been the

policy of this Government not only to classify for purposes of taxation, but to exempt producers from the taxation of the methods employed by them to put their products upon the market. The right to sell is clearly an incident to the right to manufacture or produce, and it is at least a question for the Legislature to determine whether anything done to prepare a product most perfectly for the needs of the market shall not be treated as an incident to its growth or production."

It will be said that the above authority is inapplicable, because it deals with the taxation phase, alone, and because classifications for taxation stand apart from all others. The authority should, for that very reason, be all the more controlling, because, if the classification in question is valid, for exempting the sugar planters from the heavy hand of the tax-gatherer, merely because they are sugar planters, how much more reason is there for exempting them from a law aimed at monopolists, when they are not monopolists, but, on the contrary, are the victims of the monopolists the law was framed to reach?

Is It a Classification to Provide That All Who Do Certain Acts Commit an Offense?

Whether the condemnation of Act 10 against the systematic buying of sugar for a smaller price in Louisiana is a classification or not, it is a reasonable provision, with a plain and laudable object in view—the breaking up of one of the practices of monopoly. As to the nature of the provision, it is not, in our view, a classification, because it applies to all who do the acts punished. If it is said that some refiners are the only ones who buy sugar in Louisiana, and in other States, it

may be replied that all refiners may do so at any time. It would be singular, indeed, for those who do the acts in question to complain that they are singled out for special treatment, when all who do likewise are subject to the same penalties.

The provision in question, in this aspect, is as catholic as the law against murder; but, if it be treated as a classification, it will be seen to be entirely reasonable, necessary and just.

All sugar refiners in Louisiana who systematically pay less for raw sugar in Louisiana than they pay in other States are, first, presumed to be monopolists, and, second, in case of conviction, as monopolists, and of paying such prices, are subjected to certain penalties.

The Legislature merely establishes here a rule of evidence, and then provides that, whoever is convicted upon that rule of evidence, shall be penalized.

There is no feature of the denial of due process of law, or of equal protection of the law, here.

The rule of evidence is the same as that upheld in **Meeker vs. Lehigh Valley R. Co., 236 U. S. 412 (59 L. Ed. 645)**, establishing that, as to parties subject to the jurisdiction of the Interstate Commerce Commission, its findings should be **prima facie** evidence of the facts stated in the Commission's order.

Is It Reasonable to Classify, as Prima Facie Monopolists, Those Who Systematically Pay Less for a Commodity in One State Than in Other States?

This alleged classification in Act 10 is the one which the lower Court thought invalidated the Act. We cited in our brief before the lower Court the case of **Central Lumber Company vs. South Dakota, 226 U. S.**

159 (57 L. Ed. 169), which upheld a statute identical, in principle, as far as we can see, with the one under consideration; but the opinion in the lower Court contained no reference whatever to that authority, and merely cited **Connolly vs. Union Sewer Pipe, 134 U. S. 562 (46 L. Ed. 679)**, for the general proposition that a classification must not be arbitrary.

The statute passed upon in the **Central Lumber Company case** made it an offense to sell any commodity at different prices in different places. The objection that this constituted discrimination against those who sold goods in two different places, was met by the Court, through Mr. Justice Holmes, in a decision comprehensively covering the present subject, and from which we here quote, rather fully, in view of the identity in principle between this case and that:

> "The subject-matter, like the rest of the criminal law, is under the control of the Legislature of South Dakota, by virtue of its general powers, unless the statute conflicts, as alleged, with the Constitution of the United States. The grounds on which it is said to do so are that it will deny the equal protection of the laws, because it affects the conduct of only a particular class—those selling goods in two places in the State—and is intended for the protection of only a particular class—regular established dealers; and also because it unreasonably limits the liberty of people to make such bargains as they like.
>
> "* * * If the Legislature shares the now prevailing belief as to what is public policy, and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its laws against what it deems the evil as it actually exists without covering the whole field of possible

abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, 81 (55 L. Ed. 369, 378; 31 Sup. Ct. Rep. 337; Ann Cas. 1912C, 160); Missouri P. R. Co. vs. Mackey, 127 U. S. 205 (32 L. Ed. 107; 8 Sup. Ct. Rep. 1161).

"That is not the arbitrary selection that is condemned in such cases as Southern R. Co. vs. Greene, 216 U. S. 400 (54 L. Ed. 536; 30 Sup. Ct. Rep. 287; 19 Ann. Cas. 1247). The Fourteenth Amendment does not prohibit legislation special in character. Magoun vs. Illinois Trust & Sav. Bank, 170 U. S. 283, 294 (42 L. Ed. 1037, 1043; 18 Sup. Ct. Rep. 594). It does not prohibit a State from carrying out a policy that cannot be pronounced purely arbitrary, by taxation or penal laws. Orient Ins. Co. vs. Daggs, 172 U. S. 557, 562 (43 L. Ed. 552, 554; 19 Sup. Ct. Rep. 281); Quong Wing vs. Kirkendall, 223 U. S. 59, 62 (56 L. Ed. 350, 351; 32 Sup. Ct. Rep. 192). If a class is deemed to present a conspicuous example of what the Legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with, although otherwise and merely logically not distinguishable from others not embraced in the law. Carroll vs. Greenwich Ins. Co., 199 U. S. 401, 411 (50 L. Ed. 246, 250; 26 Sup. Ct. Rep. 66). We must assume that the Legislature of South Dakota considered that people selling in two places made are prohibited use of their opportunities, and that such use was harmful, although the usual efforts of competitors were desired. It might have been argued to the Legislature with more force than it can be to that recoupment in one place of losses in another is merely an incident of financial ability to compete. If the Legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive, and for that reason did more harm than good to their

State, and that there was no other case of frequent occurrence where the same could be said, we cannot review their economics or their facts. That the law embodies a widespread conviction, appears from the decisions in other States. State vs. Drayton, 82 Neb. 254 (23 L. R. A. [N. S.] 1287; 130 Am. St. Rep 671; 117 N. W. 768); State ex rel. Young vs. Standard Oil Co., 111 Minn. 85 (126 N. W. 527); State vs. Fairmount Creamery Co., 153 Iowa, 702 (42 L. R. A. [N. S.] 821; 133 N. W. 895); State vs. Bridgman & R. Co., 117 Minn. 186 (134 N. W. 496)."

In **State ex rel. Young vs. Standard Oil Co., 111 Minn. (126 N. W. 527)**, which is cited in the **Central Lumber Company case**, a Minnesota statute of similar import, but confined to petroleum, was upheld.

In **State vs. Fairmount Creamery Company, 153 Iowa, 702 (133 N. W. 895; 42 L. R. A. [N. S.] 821)**, also cited in the **Central Lumber Company case**, an Iowa statute, also of like import, but confined to dairy products, was upheld.

In **German Alliance Ins. Company vs. Hale, 219 U. S. 307**, the same sort of classification as that here—penalizing insurance companies that combine to fix rates—was upheld.

The Court below stated that it could not see any fair reason for the classification of Act 10. The Legislature saw, with perfect clearness, that the refiners whose business was big enough to stretch from Louisiana into other States were the only ones that were dangerous as monopolists, and were the only ones whose unfair buyings of sugar should be subjected to the condemnation of the Act.

The Legislature saw, with perfect clearness, that the refiners who did not stretch from Louisiana into other

States could do no harm in their buyings, if the great buyers who extended beyond Louisiana were curbed.

Should not the judiciary, in passing upon the reasonableness of what the Legislature thus did, take note of the same conditions?

Is it not patent that the class of those who can pay arbitrary prices becomes extinct, when the monopolist is removed or made impotent?

To say, then, as the lower Court did, that to permit one class of refiners, operating in Louisiana alone, to pay the systematically reduced price for sugar, is arbitrary discrimination against the class which operates in other States, as well as in Louisiana, is to say that the Legislature did not know that, in breaking up the systematically reduced prices of the two-State refiner, it was breaking up all systematically reduced prices.

The lower Court said that the classification concerning systematic prices in buying sugar enforces different conduct on the part of people naturally in the same class, owning the same kind of property and engaged in the same business. To that, we say that the classification goes deeper than the lower Court gives it credit, and entirely removes the class which the lower Court thought was discriminated in favor of. The Legislature thought, and it is incontestably true, that the class who are singled out for their manipulation of prices, is the only class the law need reach, for, that class being reached, and subdued, in their manipulation of prices, the whole evil ceases to exist.

The declaration by this Court, in **Keokee Coke Co. vs. Taylor, 234 U. S. 224 (58 L. Ed. 1288)**, which we quote elsewhere, that a classification will be upheld which is "aimed at what is deemed an evil, and hitting it presum-

ably where experience shows it to be most felt," is again applicable, at this place.

What the lower Court holds by saying that this classification is arbitrary, is that, even though monopoly and the thimble-rigging of prices, is confined to that class of refiners who operate in both Louisiana and in other States, such class cannot be reached by any legislation.

"Although the Legislature has tracked the evils of monopoly to this class," says the lower Court, in substance and in fact, "anti-monopoly legislation against that class is arbitrary, **unless it takes in some other class, not tainted by the evil of monopoly"!**

The lower Court found that the refiners who operate in Louisiana alone would be left free by Act 10 to pay the artificially depressed price of the buying monopoly, against the legislative view that, if the refining monopoly, which extends from Louisiana to other States, is forced to abandon its artificial depression of prices, the result will be the return of prices to their normal.

With prices systematically reduced below their normal by a monopoly, do they not necessarily return to their normal, if the monopoly is driven from the field? With prices back at their normal, how can it be said that there is a hiatus, or an arbitrary discrimination in Act 10, when it fails to do the vain and idle thing of providing against price-manipulation by a class without the power to manipulate? It is self-evident that the ordinary individual or buyer, with none of the devices or power of a monopoly cannot monopolize a market, and cannot fix prices. Why, then, should the Legislature, in endeavoring to take the fixing of prices out of the hands of monopoly, be required to waste its energies, and to encumber its statute, with a provision for taking the fixing of prices

out of the hands of those whose hands are empty of such fixing of prices? If the Legislature thought that those whom Act 10 seeks to reach presented a conspicuous example of an existing evil, in which producers were not engaged, it is not for the Courts to substitute their judgment for that of the Legislature. **(Carroll vs. Ins. Co., 199 U. S. 401.)**

The Great Importance Given by the Lower Court to the Classification of Refiners Who Buy Sugar in Louisiana and in Other States.

This alleged classification was deemed of such vital importance to the scheme for regulating the business of sugar refining that its unconstitutionality, in the opinion of the lower Court, carried with it the nullity of the whole scheme.

Either the classification of refiners, who buy at lower prices in Louisiana than in other States, is of vital consequence to Act 10, or it is not.

If the classification is not of vital consequence to Act 10, it was wrong to adjudge the whole of the Act void when the classification was held unconstitutional.

If the classification is of vital consequence to Act 10, what makes it so? Nothing can make it of such vital consequence but the monopoly, or, at least, the magnitude, in the business of refining sugar, of those refiners affected by the classification. It is plain that a provision, dealing with an insignificant branch of the business, would not invalidate the whole scheme of regulation in its fall.

In other words, can it be said, in order to annul the classification, that it affects only "a very limited class of persons or corporations engaged in the business of refin-

ing sugar in Louisiana," and then, in the next breath, that, the classification being of such supreme importance, and being null, its nullity carries with it the nullity of the whole of Act 10?

The basis of the conclusion, in the mind of the lower Court, that the classification was unreasonable, was the finding that it applied to "a very limited class" only. It is necessary to gauge legislation in the light of the conditions out of which it springs; and, in the light of those conditions, how much weight can be given to the complaint that the class in question is "very limited," when its complaining representative modestly seeks to diminish itself by pretending to be only 47.43 per cent of the entire industry, although it becomes silent when impeached as amounting to more than 75 per cent thereof?

In the search for reasonableness of classification, what basis are we to adopt, if a class, of which one member alone is 75 per cent of the whole, is considered arbitrarily "limited"?

Is It Better Policy to Let a Monopoly Regulate Prices Instead of a Legislature?

Act 10 was made the target, in the argument below, for the complainant, of a great deal of apparently successful carping and invective, as a legislative interference with the sacred laws and conditions of trade. We merely say, in that connection, that, if prices are to be fixed, it should be less reasonable for them to be fixed by an unscrupulous monopoly than by a Legislature.

Legislative interference with trade is, indeed, reprehensible; but, if monopoly has become so complete and

powerful and tyrannical as to threaten the existence of a great industry, upon which the welfare of the State depends, the Legislature would be recreant to its trust if it did not remove, artificially, it may be, that which has been unlawfully and artificially built up.

It ill proceeds from the mouth of the American Sugar Refining Company to deplore the un-scientific and anti-freedom-of-trade regulation of price by the Legislature, which takes this very regulation of price out of its own hands.

The Authorities on the Subject of Classification.

Connolly vs. Union Sewer Pipe Co., 184 U. S. 562; G. C. & S. F. R. R. vs. Ellis, 165 U. S. 150; and Watson vs. Maryland, 218 U. S. 173 (54 L. Ed. 989), were the cases quoted by the lower Court in support of its conclusion that this classification was arbitrary.

The principle of **Connolly vs. Union Sewer Pipe Co.**, and of **G. C. & S. F. R. R. vs. Ellis**, would by no means conflict with the classification here, for it was said, in the **G. C. & S. F. R. R. case**, and was quoted in the **Connolly case**, that the "classification must always rest upon a reasonable and just relation to the act in respect to which the classification is proposed"; and what more "reasonable and just relation" can there be, in the anti-monopoly regulation of a business, between the object of suppressing the practice of monopoly and the singling out of the only class that does or can practice it?

Let us see what the cases cited by the lower Court were. The Connolly case was one exempting the growers of

agricultural products and the raisers of live-stock from a general anti-trust law of Illinois. If the condemnation of Act 10 against systematic under-buying in Louisiana is a classification, it is not of the above kind.

In the **G. C. & S. F. case**, railroad companies alone were made liable for an attorney's fee, for failure to pay certain claims on demand.

There is nothing in Act 10 that brings it within the scope of the **G. C. & S. F. R. R. decision.**

In **Watson vs. Maryland, supra**, it was held reasonable to exempt from regulation physicians who had practiced medicine in Maryland for four years prior to the adoption of a law regulating the medical profession. What the Court said there, through Mr. Justice Day, concerning the medical profession, and the jealousy of the police power over it, is equally applicable to the business of refining sugar as practiced in Louisiana:

> "It is too well settled to require discussion at this day that the police power of the States extends to the regulation of certain trades and callings, particularly those which closely concern the public health. There is, perhaps, no profession more properly open to such regulation than that which embraces the practitioners of medicine."

The opinion, discussing the principle underlying these regulatory measures, fully upholds Act 10:

> "The right to regulate occupations was considered by this Court at the present term in the case of Williams vs. Arkansas, 217 U. S. 79, ante, 673 (30 Sup. Ct. Rep. 493), in which it was held that a State statute which prohibited a certain class of drumming or soliciting of business on trains did not amount to

a denial of the equal protection of the law. In that case, the recent cases in this court were reviewed and followed. It was therein held that regulations of a particular trade or business essential to the public health and safety were within the legislative capacity of the State in the exercise of its police power, and that, unless such regulations were so unreasonable and extravagant as to interfere with personal property and rights of citizens, unnecssarily and arbitrarily, they are within the power of the State, and that the classification of the subjects of such legislation, so long as such classification has a reasonable, and is not merely arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to the citizen the equal protection of the laws."

Hospital physicians, chiropodists, midwives, etc., were extempted from the Maryland Act; and concerning that exemption, as denying the equal protection of the law, the Court said:

"The selection of the exempted classes was within the legislative power, subject only to the restriction that it be not arbitrary or oppressive, and apply equally to all persons similarly situated. We cannot say that these exceptions nullify the law. The reason for them may be that hospitals are very often the subject of State or municipal regulation and control, and employment in them may be by boards responsible to public authority under State law or municipal ordinance. Certainly, the conduct of such institutions may be regulated by such laws or municipal regulations as might not reach the general practitioner of medicine. In any event, we cannot say that these exceptions are so wholly arbitrary and have such slight relation to the objects to be attained

by the law as to require Courts to strike them down as a denial of the equal protection of the law, within the meaning of the Federal Constitution."

We fail to see any hostility to Act 10 in any of the three above cases; and we also fail to see why the authorities which we cited to the lower Court, and which we now cite to your Honors, were passed over in silence.

We have already quoted the case of **Central Lumber Company vs. South Dakota,** in another place. It is, it seems to us, on all fours with the case at bar. So, also, is the case of **International Harvester Company vs. Missouri, 234 U. S. 199 (58 L. Ed. 1282),** where vendors of labor and the purchasers of commodities were held validly exempted from an anti-trust law of Missouri. That decision was put by this Court, through Mr. Justice McKenna, on the very ground we have stressed above as justifying the classifying together of those, only, who are capable of doing the harm legislated against:

"Therefore, it may be there is restraint of competition in a combination of laborers, and in a combination of purchasers, but that does not demonstrate that legislation which does not include either combination is illegal. Whether it would have been better policy to have made such comprehensive classification, it is not our province to decide. In other words, whether a combination of wage-earners or purchasers of commodities called for repression by law under the conditions in the State, was for the Legislature of the State to determine."

Quoting from **Carroll vs. Greenwich Insurance Company, 199 U. S. 401,** the Court said, on the same subject:

"Again, 'if an evil is specially experienced in a

particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinary requirement that they shall be couched in all-embracing terms.' And, 'if the Legislature of the State of Iowa deems it desirable artificially to prevent, so far as it can, the substitution of combination for competition, this Court cannot say that fire insurance may not present so conspicuuos an example of what that Legislature thinks an evil as to justify special treatment. The imposition of a more specific liability upon life and health insurance companies were held valid in Fidelity Mutual Life Ass'n vs. Mettler, 185 U. S. 308 (46 L. Ed. 922; 22 Sup. Ct. 662)."

Another passage in the **International Harvester decision** so strongly sustains the argument we have made above, that we ask leave to again quote:

"We might leave the discussion with that and the other cases. They decide that we are helped little in determining the legality of a legislative classification by making broad generalizations, and it is for a broad generalization that plaintiff in error contends—indeed, a generalization which includes all the activities and occupations of life; and there is an enumeration of wage-earners in emphasis of the discrimination in which manufacturers and sellers are singled out from all others. The contention is deceptive, and yet it is earnestly urged in various ways which it would extend this opinion too much to detail. 'In dealing with restraints of trade,' it is said, 'the proper basis of classification is obviously neither in commodities nor services, nor in persons, but in **restraints.**' A law, to be valid, therefore, is the inflexible deduction, cannot distinguish between **'restraints,'** but must apply to all restratnis, whatever their degree or effect

or purpose; and that, because the Missouri statute has not this universal operation, it offends against the equality required by the Fourteenth Amendment. This Court has decided many times that a legislative classification does not have to possess such comprehensive extent. Classification must be accommodated to the problems of legislation; and we decided, in Ozan Lumber Co. vs. Union County Nat. Bank, 207 U. S. 251 (52 L. Ed. 195; 28 Sup. Ct. Rep. 89), that it may depend upon degrees of evil without being arbitrary or unreasonable. We repeated the ruling in Heath & M. Mfg. Co. vs. Worst, 207 U. S. 338 (52 L. Ed. 236; 28 Sup. Ct. Rep. 114); in Engel vs. O'Malley, 219 U. S. 128 (55 L. Ed. 128; 31 Sup. Ct. Rep. 190); in Mutual Loan Co. vs. Martell, 222 U. S. 225 (56 L. Ed. 175; 32 Sup. Ct. Rep. 74; Ann. Cas. 1913B, 529), and again in German Alliance Ins. Co. vs. Lewis, 233 U. S. 389, 418, ante, 612 (34 Sup. Ct. Rep. 612)."

In the case of **Bosley vs. McLaughlin, 236 U. S. 385 (59 L. Ed. 632)**, it was held, through Mr. Justice Hughes:

> "Exempting graduate nurses in hospitals from the operation of Cal. Stat. 1911, p. 437, * * * forbidding the employment of women in certain specified establishments for more than eight hours in one day, or forty-eight hours in one week, does not render the statute invalid as unreasonably discriminatory, although such prohibition applies to student nurses in hospital training schools, to experienced nurses, to graduate women pharmacists and other hospital employees, such as matrons, seamstresses, bookkeepers, office assistants, and those engaged in household work."

With respect to the exemption in the above case, and the reasons of the Legislature in making the same, the Court remarked:

"It is one of which the Legislature can take cognizance" * * * and that "**it would be manifestly proper for the Legislature to recognize an exigency with respect to their employment, making it advisable to take them out the joint prohibition.**"

In **Missouri Pacific Ry. Co. vs. Omaha, 235 U. S. 121 (59 L. Ed. 157)**, the City of Omaha had required the Missouri Pacific Railway Company to construct a viaduct over its line of railway, entirely at its expense, although other railroads were likewise responsible for the conditions existing there. Concerning this exercise of the police power, the Court said, through Mr. Justice Day:

"In placing the expense entirely upon the railroad company, whose locomotives and trains are principally responsible for the resulting danger to the public, we do not find such abuse of the recognized authority of the State as has justified the Courts in some cases in enjoining the enforcement of State and municipal legislation. * * *"

"The Constitution of the United States, requiring that no State shall deprive any person of life, liberty, or property, without due process of law, has not undertaken to equalize all the inequalities which may result from the exercise of recognized State authority. In the exercise of the police power, it may happen, as it often does, that inequality results which the law is powerless to redress. It is only in those clear and unmistakable cases of abuse of legislative authority that the Court is authorized, under section of the Federal Constitution, to enjoin the exercise of legislative power."

The Court also took notice of the fact that "the local authorities are presumed to have knowledge of local con-

ditions, and to have been induced by competent reasons to take the action which they did."

In **Mallinckrodt Chemical Works vs. Missouri, 238 U. S. 41 (59 L. Ed. 1192)**, it was held:

> "Requiring from managing officers of corporations an affidavit setting forth the non-participation of the corporation in pools, trusts, agreements, combinations, etc., as is done by Mo. Rev. Stat. 1909, Sec. 10,322, does not deny the equal protection of the laws guaranteed by U. S. Const., 14th Amend., because individuals, partnerships, and associations of individuals, although equally within the law against monopolies, are not required to make similar exculpatory affidavits."

Answering the argument that it was unjust discrimination because individuals, partnerships and associations, although equally within the law against monopolies, were not required to make similar affidavits, the Court said, through Mr. Justice Pitney:

> "**The Legislature may have reasonably concluded that, for these and other reasons, corporations are peculiarly apt instruments for establishing and effectuating those trusts and combinations against which the prohibition of the statute is directed**, that their business affiliations are not so easily discovered and traced as those of individuals, and that there was, therefore, a peculiar necessity and fitness in annually requiring from each corporation a solemn assurance of its non-participation in the prohibited practices. The Act is, in this respect, fairly within the wide range of discretion that the States enjoy in the matter of classification. Missouri, K. & T. R. Co. vs. Cade, 233 U. S. 642, 650 (58 L. Ed. 1135, 1138; 34 Sup. Ct. Rep. 678), and cases cited."

In the **German Alliance Insurance Company case, 233 U. S. 389 (58 L. Ed. 1011, 1024)**, some of the requirements of a regulatory measure, similar to the one at bar, were: That every fire insurance company should file general basis schedules, showing rates on all risks insured; that the Superintendent of Insurance should have a veto control over rates of insurance; that no company should engage in the busness until schedules of rates were filed with the Superintendent, nor write insurance at a different rate than that named in the schedules. The farmers' mutual insurance companies were exempted from the Act. This exemption being made the basis of attack before this Court, it was held, through Mr. Justice McKenna:

> "The provision of the statute is, 'That nothing in this Act shall affect farmers' mutual insurance companies, organized and doing business under the laws of this State, and insuring only farm property.' The distinction is, therefore, between co-operative insurance companies insuring a special kind of property and all other insurance companies. It is only with that distinction that we are now concerned. There are special provisions in the statutes of Kansas for the organization of co-operative companies, and if the statute under review discriminates between them the German Alliance Company cannot avail itself of the discrimination. A citation of cases is not necessary, nor for the general principle that a discrimination is valid if not arbitrary, and arbitrary in the legislative sense—that is, outside of that wide discretion which a legislature may exercise. **A legislative classification may rest on narrow distinctions. Legislation is addressed to evils as they appear, and even degrees of evil may determine its exercise.** Ozan Lumber Co. vs. Union County Nat. Bank, 202 U. S. 623 (50 L. Ed. 1176; 26 Sup. Ct. Rep. 768)."

In **Keokee Coke Company vs. Taylor, 234 U. S. 224 (58 L. Ed. 1288)**, it was held, through Mr. Justice Holmes, that singling out persons, firms or corporations engaged in mining and manufacturing as the ones to be forbidden to issue orders for the payment of labor not purporting to be redeemable in money, as was done by Virginia laws, did not render such statute invalid.

In the course of the opinion, the Court said **(p. 1290)**:

> "It is more pressed that the Act discriminates unconstitutionally against certain classes. But, while there are differences of opinion as to the degree and kind of discrimination permitted by the 14th Amendment, it is established by repeated decisions **that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the Court can see. This is for the Legislature to judge, unless the case is very clear.** Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, 81 (55 L. Ed. 369, 378; 31 Sup. Ct. Rep. 337; Ann. Cas. 1912C, 160); Central Lumber Co. vs. South Dakota, 226 U. S. 157, 160 (57 L. Ed. 164, 169; 33 Sup. Ct. Rep. 66); Patsone vs. Pennsylvania, 232 U. S. 138, 144, ante, 281 (34 Sup Ct. Rep. 281). The suggestion that others besides mining and manufacturing companies may keep shops and pay their workmen with orders on themselves for merchandise is not enough to overthrow a law that must be presumed to be deemed by the Legislature co-extensive with the practical need."

It was held, through Mr. Justice Pitney, in **Singer Sewing Machine Co. vs. Brickell, 233 U. S. 304 (58 L. Ed. 975)**, that it did not deny equal protection of the laws to

exempt local merchants, selling sewing machines at their places of business, from a general license tax on vendors of sewing machines.

It was held, through Mr. Justice Holmes, in **Hammond Packing Company vs. Montana, 233 U. S. 331 (58 L. Ed. 987)**, that a discriminatory tax on oleomargerine, from which butter was exempted, did not deny the equal protection of the laws.

It was held, through Mr. Justice Hughes, in **Atlantic Coast Line R. R. vs. Georgia, 23 4U. S. 280 (58 L. Ed. 1312)**, that to require railroad locomotives on main lines to have headlights, but excepting tram roads, mill roads and lumber roads, did not deny the equal protection of the laws.

There was a similar ruling, through Mr. Justice McKenna, in **Kansas City R. R. Co. vs. Anderson, 233 U. S. 325 (58 L. Ed. 983)**, with regard to singling out railroad companies, from all other litigants, for liability to double damages and attorneys' fees where live-stock claims were not settled in thirty days from demand.

In **M., K. & T. R. R. Co. vs. Cade, 233 U. S. 647 (58 L. Ed. 1137)**, a similar case was decided by Mr. Justice Pitney.

In **C. & O. R. R. vs. Conley, 230 U. S. 12 (57 L. Ed. 1597)**, it was held, through Mr. Justice Hughes, that electric lines and street railways "owned and operated in the State," could be exempted, without denying equal protection of the laws, from a general law fixing railroad fares.

In **Rosenthal vs. New York, 226 U. S. 260 (57 L. Ed. 213)**, it was held, through Mr. Justice Pitney, that it did not deny equal protection of the laws to make it an offense

for a dealer in junk to buy, without first making diligent inquiry, second-hand material belonging to railroad, telegraph, gas or electric light companies only.

In maintaining, in **Citizens' Teleg. Co. vs. Fuller, 229 U. S. 322 (57 L. Ed. 1207)**, the exemption of telephone companies, with gross receipts less than $500 a year, from a general **ad valorem** tax, the Court, through Mr. Justice McKenna, cited the following cases as precedents:

In **Travellers' Ins. Co. vs. Connecticut, 185 U. S. 364 (46 L. Ed. 949; 22 Sup. Ct. Rep. 673)**, a law of the State was sustained which imposed a tax on the stock of non-residents in corporations and exempted the stock of residents.

In **King vs. Mullins, 171 U. S. 404, 435 (43 L. Ed. 214, 226; 18 Sup. Ct. Rep. 925)**, a distinction was made in the taxing system of the State between tracts of 1,000 acres or less and tracts of more than 1,000 acres. It was sustained.

In **Consolidated Coal Co. vs. Illinois, 185 U. S. 203 (46 L. Ed. 872; 22 Sup. Ct. Rep. 616)**, a law providing for the inspection of mines was held not unconstitutional by reason of its limitation to mines where more than five men were employed at any one time. See, also, **McLean vs. Arkansas, 211 U. S. 539 (53 L. Ed. 315; 29 Sup. Ct. Rep. 206)**.

In **New York, N. H. & H. R. Co. vs. New York, 165 U. S. 628 (41 L. Ed. 853; 17 Sup. Ct. Rep. 418)**, a law requiring railroads to beat their passenger coaches, but exempting roads of less than fifty miles in length, was declared not unconstitutional and discriminatory. To like effect is **Dow vs. Beidelman, 125 U. S. 680 (31 L. Ed. 841; 2 Inters. Com. Rep. 56; 8 Sup. Ct. Rep. 1028)**, where a classification of railroads by their length in fixing the rate of passengers' fare was sustained.

In **Postal Teleg. Co. vs. Adams, 155 U. S. 688 (39 L. Ed. 311; 5 Inters. Com. Rep. 1; 15 Sup. Ct. Rep. 268, 360)**, a tax was graduated according to the amount and value of the property, measured by miles, and was in lieu of taxes levied directly on the property. Held valid.

In **Magoun vs. Illinois Trust & Sav. Bank, 170 U. S. 283 (42 L. Ed. 1037; 18 Sup. Ct. Rep. 594)**, legacies less than a certain amount were held legally exempt from taxation.

Other cases in point are **Baccus vs. Louisiana, 232 U. S. 334; Quong Wing vs. Kirkendall, 223 U. S. 59; Mutual Loan Co. vs. Martell, 222 U. S. 233; Miller vs. Wilson, 236 U. S. 373; Jeffrey Mfg. Co. vs. Blagg, 235 U. S. 571.**

Act 10 Should Not be Nullified, if Invalid in an Unessential Particular.

If the exemption of sugar planters from Act 10 is a denial of the equal protection of the law, the whole Act must fall, for the invalidity of such exemption is fatal. It is clear, however, we believe, that this exemption is valid.

If, on the other hand, the provision with regard to the buying of sugar in Louisiana at a less price than in other States, is invalid, it by no means follows that the entire scheme of the regulation of the refining business must fall.

The provision as to the buying of sugar is only one barrier against the frauds of monopoly; is only one prop to the Legislature's attempt to save the refining business from spoliation. For the judiciary to say that the nullity of this provision entails the nullity of the whole Act, is to say that the worthlessness of some one remedy justifies the physician to take the life of his patient.

The provision in question merely puts refiners who come

within its terms under the presumption that they are monopolists, and subjects them, in addition, to certain prescribed penalties. We cannot understand how it can be thought that this provision is a **sine qua non** to the regulation of the business of refining sugar.

The lower Court gave no other reason for nvalidating the whole statute, than that this particular provision "was the heart of the scheme for regulating the business of refining sugar." That is tantamount to saying that that business cannot be regulated at all; for, this rebuttable presumption being its "heart," and said "heart" being illegal, there is an end to the regulation of the business.

The lower Court was, undoubtedly, correct in concluding that the Legislature was very anxious to check the systematically low price of sugar in Louisiana. It undoubtedly looked hopefully to this rebuttable presumption for such a check; but does that make the presumption in question the "heart" of Act 10?

The systematically low price of sugar in Louisiana is, probably, the chief material symptom and harm of monopoly in the refining business; but the monopoly is greater than any symptom thereof, and no other "heart" can be assigned to Act 10 than a design to destroy the disease itself—the monopoly. That "heart" exists, whether the rebuttable presumption stands or falls. In other words, the rebuttable presumption is a detachable and independent part of the statute, and the statute should be upheld, be the fate of the presumption what it may.

We merely cite here a few of the authorities on the rule of statutory construction requiring the saving of a statute where an unconstitutional provision is not an essential or integral part of it:

Lewis' Southerland on Statutory Construction, 2nd

Ed., Sec. 296; Tiernan vs. Rucker, 102 U. S. 123 (26 L. Ed. 103); Guinn vs. United States, 238 U. S. 347 (59 L. Ed. 1340); Sou. Pac. Co. vs. Campbell, 230 U. S. 537 (57 L. Ed. 1610); L. & N. R. R. Co. vs. Garrett, 231 U. S. 298 (58 L. Ed. 229; Grand Trunk R. R. Co. vs. Michigan R. R. Commission, 231 U. S. 457 (58 L. Ed. 310); Singer Sewing Machine Co. vs. Brickell, 233 U. S. 304 (58 L. Ed. 974).

We ask for the reversal of the judgment and for the dismissal of the complaint, on the ground that the complainant comes into equity with unclean hands; and, in the alternative, we ask that Act 10 be declared valid, and that the injunction prayed for be denied.

Respectfully submitted,

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APPENDIX.

ACT No. 10.

House Bill No. 6. **By Mr. Fontenot.**

AN ACT

Regulating the business of refining sugar, in so far as it is necessary to protect same and the public from monopoly therein, and establishing to that end the rules and conditions on which it may be carried on in the State, and prohibiting certain irregularities and practices in said business; defining the business of refining sugar; imposing inspection fee upon refined sugar; creating the office of State Inspector of Sugar Refining, and such assistants as may be necessary, and providing that the Supervisor of Public Accounts of Louisiana shall be ex-officio State Inspector of Sugar Refining and for his salary, duties, and those of his assistants; providing for the sale or other disposition of refineries kept idle for illegal and monopolistic purposes; permitting the appointment of receivers in certain cases of violation of this law; fixing penalties for the violation of this law, and of the regulations to be promulgated by the State Inspector of Sugar Refining; providing rules of procedure and evidence for the enforcement hereof, and providing for the enforcement of this Act by suit to be in-

stituted on behalf of the State by the Attorney General or by the District Attorney of each parish under the direction of the Attorney General or of the Governor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the business of refining sugar in the State of Louisiana is hereby recognized and declared to be impressed with a public interest by reason of the nature and by reason of the monopolization thereof; and the sugar refineries now and hereafter operating in the State, in the business of buying raw sugar and manufacturing refined sugar and in the business of manufacturing refined sugar whether the raw sugar is bought or is otherwise handled are hereby declared to be public utilities.

Section 2. Be it further enacted, etc., That the office of State Inspector of Sugar Refining is hereby created, and the Supervisor of Public Accounts for the State of Louisiana is hereby made ex-officio State Inspector of Sugar Refining.

Section 3. Be it further enacted, etc., That every person engaged in the business of refining sugar within the State shall make monthly reports to the State Inspector, which shall show the amount of sugar bought and the price; the amount of sugar sold, and the price; the amount of sugar contracted to be sold, and the price; the amount of sugar held on storage, and the cost of holding it; the number of days and hours in operation; the amount of raw sugar taken into process; the amount of refined sugar produced; the repairs made; the amount expended in repairs and in upkeep; the amount expended in general and overhead

charges; the condition of the plant, and the reason for any and all stoppages and for any non-operation of the plant. The data collected under this section shall be consolidated and tabulated every six months, without making any reference therein to any particular refinery, and said tabulation shall be open to the inspection of the public.

Section 4. Be it further enacted, etc., That it shall be the duty of said Inspector to inspect the books and accounts, and records, of all concerns engaged in the business of refining sugar at least twice a year; and he may, at the direction of the Governor, make public such compiled and tabulated data as he may deem beneficial to the sugar trade, but he shall not make public any data relating to any particular refinery. He may also call for special reports from said refineries covering any branch of their business at any time; provided that no special report shall call for the disclosure of any trade secrets.

Section 5. Be it further enacted, etc., That every person engaged in the business of refining sugar shall pay, monthly, to the State Inspector of Sugar Refining, for the credit of the fund for the inspection of sugar, one-half cent on each and every three hundred and fifty pounds of granulated sugar made, which sum shall be paid into the State Treasury for the account of the fund for the inspection of sugar. Out of the fund hereby created shall be paid a salary of six hundred dollars per annum to the State Inspector of Sugar Refining and the salaries of such assistants as he may designate, and all expenses of his office.

Section 6. Be it further enacted, etc., That it is declared to be unlawful for any person engaged in the business of refining sugar to buy sugar on an ex-parte test of its quality, or upon any other weights than those of the

actual net contents of any bag or package; and, in furtherance of this prohibition, the State Inspector of Sugar Refining is empowered and he is hereby directed to formulate, and to promulgate, by publication in three consecutive editions of a newspaper published in the City of New Orleans, such reasonable regulations as he may deem proper, and he may, also, formulate and promulgate, from time to time, in the same way, such other reasonable regulations, affecting any branch of the business of sugar refining, as may be conducive to the public interest, and to the prevention of monopoly in the business of refining sugar, or the protection of the public from the consequences thereof.

Section 7. Be it further enacted, etc., That any person engaged in the business of refining sugar within this State who shall systematically pay in Louisiana a less price for sugars than he pays in any other State shall be prima facie presumed to be a party to a monopoly or combination or conspiracy in restraint of trade and commerce, and upon conviction thereof shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so. Any person convicted of violating the provisions of this section shall have his license to do business in Louisiana revoked and cancelled; and any domestic corporation shall be liquidated, and any foreign corporation shall be ousted from the State, and its property sold. If the refining business of any person, firm or corporation, is conducted in violation of this provision of this Act, or in violation of the obligation to operate any refinery as a public utility, the Court may, if irreparable injury to the public interest is shown, appoint a receiver over such business at any stage of the proceed-

ings, and the receiver may, after he has been sworn and has given bond in such amount as the Court shall have fixed, be authorized to carry on the business, if the public interest requires it, until the termination of the suit.

Section 8. Be it further enacted, etc., That, whenever it shall be made to appear to the satisfaction of any court of competent civil jurisdiction, by affidavit or otherwise, either **in limine** or after trial, that any refinery has been closed or kept idle for more than one year, it shall be presumed that such refinery was closed and is being kept idle for the purpose of violating or in aid of violation of this Act, or of the laws of the State forbidding monopolies, combinations and conspiracies in restraint of trade and commerce, but it shall be the duty of the Court to receive and consider any and all evidence, whether by affidavit or otherwise, which may rebut this presumption; and if the Court shall find that the facts do not fairly rebut the presumption herein established, then it shall issue an order to the owner of such refinery, requiring that same be sold to **bona fide** third parties within a delay to be fixed by the Court not to exceed six months from the date of such order, and if, at the expiration of that time, said plant be not sold, the Court shall appoint a receiver to take possession of same, under such bond as it may fix, and said receiver shall be authorized to make sale, or lease, or other disposition of same, under the direction of the Court, all within twelve months of the order appointing him. In computing said period of one year, any plant shall be treated as idle which has not been operating **bona fide**. No sale or lease under this section or under this Act shall be made to any individual who has been connected with the management of said refinery nor to any corporation nor firm composed

in whole or in part of said individuals, and no corporation or partnership shall buy or lease said plant if more than 30 per cent of its stock be held by former stockhloders of the offending corporation. Provided, all sales by receivers under this or other sections of this Act shall be made according to the law governing sheriff's sales.

Section 9. Be it further enacted, etc., That any person, firm or corporation owning or operating a refinery who is charged with violating this law, and shall be made defendant in a suit by the State for forfeiture of charter, or for cancellation of license to do business in the State, and for ouster therefrom, may, upon a showing by the State that the conspiracy, monopoly, or acts charged are detrimental to the general public welfare, be ruled into court, at any stage of the proceedings, to show cause why an injunction should not issue, or a receiver be ordered to take charge of the defendant's business, with power to operate after having been sworn and given bond as fixed by the Court. From the order of the Judge, upon any such rule, a suspensive appeal without bond shall lie on the original papers, returnable within five days; and in the appellate court said cause shall be heard and determined within forty days after the appeals is lodged; provided, should said appeal be lodged during the vacation of said court, said period of forty days shall begin immediately after the termination of said vacation.

Section 10. Be it further enacted, etc., That the violation of any of the provisions of this Act not otherwise provided for, or of any of the regulations promulgated by the State Inspector of Sugar Refining, shall be punished by a fine of not less than fifty dollars and not more than twenty-five hundred dollars. Each day's violation of this Act shall constitute a separate offense. This fine, and

any other fines imposed in this Act, shall be recovered and the enforcement of any provisions of this Act may be had in any court of competent civil jurisdiction, at the suit of the State through the Attorney General on his own motion, or through the District Attorney of the district in which the defendant is domiciled, or in which the offense has been committed, when so directed by the governor, or by the Attorney General.

Section 11. Be it further enacted, etc., That in any suit instituted under this Act the Judge shall give to books, letters and other documents (or apparent copies thereof), of the defendant, full effect as being what they purport to be and as establishing the facts carried on their face, unless there is sufficient rebuttal or countervailing proof against same; and such books, letters, or other documents (or apparent copies thereof), shall be received in evidence without any other formality than proof of their having been in the archives or in the possession or under the control of the defendant; and the Judge shall receive in evidence any report by any legislative committee of the State of Louisiana, or of the Senate or House of Representatives of the United States, or of any bureau or department, or of any commission, organized or acting under the authority, either of the State of Louisiana or of the Senate or the House of Representatives of the United States, pertinent to the issue, and likewise he shall receive in evidence any record, or parts of the same, of any court of any State, or of the United States, in any suit or legal proceeidng to which the defendant is or was a party; provided, that the whole of any such record shall be produced, unless it is shown by the certificate of the custodian thereof that the whole record is not obtainable, and provided, further, that the testimony of a witness shall not be received unless the

party against whom same is offered has had the opportunity to cross-examine; but the defendant may put such record in evidence whether the State or other plaintiff has had the right to cross-examine or not, and any such report or record or testimony shall be **prima facie** evidence of the facts set forth therein, subject, however, to rebuttal by any competent evidence.

Section 12. Be it further enacted, etc., That in all cases under this law the defendant shall file all exceptions **in limine litis**, if need be, in the alternative, after the usual delays and such additional delays as the Court may allow; provided, however, that a plea to the jurisdiction shall not be considered waived by any other pleas or exceptions filed under the reservation thereof. The Judge shall take up such exceptions in preference over all other business and shall decide all questions raised therein within ten days after submission, and his ruling shall have the effect of **res judicata**, unless the party cast shall appeal within five days. The appeal shall be returnable to the appellate court within ten days, where the case shall be heard and determined within forty days. Should said exceptions be overruled by final judgment of the appellate court, the defendant must file his answer, covering all questions of controverted fact, within fifteen days thereafter, and the case may be set down for trial on the application of either party, in which case the Judge shall take up the consideration of the matter, in preference over all other business.

Section 13. Be it further enacted, etc., That any and all interlocutory judgments in cases affected by this Act not otherwise provided for herein shall be appealable within five days, and shall be heard and determined in the appellate court within twenty days after appeal is

lodged, and any interlocutory judgment not appealed except those rendered during the progress of the trial shall be final, and shall not be reopened on final appeal.

Section 14. Be it further enacted, etc., That the District Attorney, prosecuting any case to judgment for the State under this Act, shall be paid such reasonable fee out of the property of the defendant as the Court may fix, same to be taxed as costs.

Section 15. Be it further enacted, etc., The business of refining sugar, within the meaning of this Act, is hereby defined to be that of any concern that buys and refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys and refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it.

Section 16. Be it further enacted, etc., That the word "person," or "persons," whenever used in this Act, shall be deemed to include all firms, and all corporations and associations existing under or authorized by the laws of either the United States, the laws of the Territories, the laws of any State, or the laws of any foreign country.

Section 17. Be it further enacted, etc., That all laws, or parts of laws, in conflict herewith are hereby repealed.

L. E. THOMAS,
Speaker of the House of Representatives.

THOMAS C. BARRET,
Lieutenant Governor and President of the Senate.

Approved June 10, 1915.

L. E. HALL,
Governor of the State of Louisiana.

A true copy:

W. F. MILLSAPS,
Secretary of State.

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United States Supreme Court

OCTOBER TERM, 1915.

No. 847.

WILLIAM N. McFARLAND,
Supervisor of Public Accounts of Louisiana, and Others,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

Appeal from United States District Court,
Eastern District of Louisiana,
From Decree Granting Injunction.

Supplemental Brief on Behalf of W. N. McFarland and Others, Appellants.

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United States Supreme Court

OCTOBER TERM, 1915.

No. 847.

WILLIAM N. McFARLAND,
Supervisor of Public Accounts of Louisiana, and Others,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

Appeal from United States District Court,
Eastern District of Louisiana,
From Decree Granting Injunction.

Supplemental Brief on Behalf of W. N. McFarland and Others, Appellants.

We discussed, in our original brief, those points wherein Act 10 was deemed invalid by the lower Court.

We shall devote this supplemental brief to a discussion of those points of attack on Act 10, which the lower Court passed over without notice.

The first of these points may be described in the following question:

Does It Violate the Guarantees of Due Process of Law, and of Equal Protection of the Laws, to Treat the Sugar Refining Business as Impressed With Public Interest?

Act 10 declares that the once private business of refining sugar has become impressed with a public interest.

Paragraphs V, VI and VII of the bill challenge this declaration as invasive of private rights of property.

Paragraph XI of the bill contains a description of complainant's business, and of the refining business in general, together with an account of the alleged workings of the law of supply and demand, as affecting the price of raw sugar, all intended to show that complainant is not monopolizing the refining business in Louisiana, and is not fixing the price of the raw sugar it buys, and is not buying its raw sugar at an unreasonably low price.

The answer of the defendants to Paragraph XI of the bill was in these words:

> "Complainant's lawful right to buy sugar, and to do business in Louisiana is, to no extent, hampered or restrained by said Act No. 10, the aim and purpose of said Act being to make impossible in said business the repetition of complainant's unlawful, dishonest and demoralizing record.
>
> "The fundamental economic law of supply and demand, laid down by complainant in this paragraph, and all other economic laws and conditions in the business of refining sugar in Louisiana, have, to a large extent, been suspended, or nullified, or reversed by complainant's monopoly.
>
> "Complainant cannot profit by its own wrong, or put the consequence of its wrong on the producers of raw sugar, by saying, as it does in this paragraph,

that they bring their sugar to market during the months of November and December, with a rush too great for the refining capacity, when said sugar could, but for complainant's wrong, have found a market as plantation granulated, or through a planter's refinery, or through the refineries at Sugarlands, at St. Louis, at Philadelphia, and even at New York, which complainant suppressed or boycotted away from the Louisiana market.

"It is misleading and deceptive for complainant to allege that, by reason of the alleged surplus of sugar sent by the Louisiana producers to market in the months of November and December, it has been necessary to reduce the price to cover storage charges, and the like; for all sugar, that which was refined as it came to market, as well as that stored, was subjected to the complainant's unvarying process of price-manipulation, as set forth in the letter from complainant's Vice-President to its President, quoted above, in paragraph XIV, as the settled policy of complainant in dealing with raw sugar."

"The above answers the four detailed reasons set forth by complainant why it has not profited by the aforesaid price-differential, but defendants believe and aver that complainant has made said price-differential at New Orleans enormously larger than was necessary to cover said pretended disadvantages, due to the alleged want of refinery-capacity."

The legislative declaration, that a public interest has attached to a business, is entitled to great weight. It is not conclusive, of course, for not even the police power may wantonly impair private rights. Such an exercise of the legislative discretion would seem to rest upon a presumption affirming the existence of the evil to be remedied, as well as the propriety of the remedy to be applied.

This was expressed in **Central Lumber Company vs. South Dakota, 226 U. S. 157 (57 L. Ed. 174)**, through Mr. Justice Holmes:

> "The Courts cannot review the economics or facts on which the Legislature of a State bases its conclusions that an existing evil should be remedied by an exercise of the police power. Central Lumber Co. vs. South Dakota, 226 U. S. 157 (33 Sup. Ct. 66; 57 L. Ed. 174)."

In **Munn vs. Illinois, 44 U. S. 113 (24 L. Ed. 77)**; **Brass vs. North Dakota, 153 U. S. 391 (38 L. Ed. 757)**, and **German Alliance Ins. Co. vs. Lewis, 233 U. S. 389 (58 L. Ed. 1011)**, the facts, supporting the legislative declaration of public interest, were merely **inferred** by the Courts, on the ground that "great opportunities for combination to raise and control * * * charges" existed.

If the existence of the facts justifying such a declaration may be **inferred by the Courts**, it should be easily within the province of the Legislature to actually declare the existence of such facts, reserving to the Courts their province of saying whether the Legislature has acted arbitrarily.

It is stated, in **American Live Stock Co. vs. Exchange (Ill.), 36 Am. St. Rep. 398 (18 L. R. A. 200)**, and in **Ladd vs. Southern Cotton Press, 53 Texas, 172**, that a legislative declaration, as to the existence of a public interest in a business, sought to be regulated, is vital and material.

It was with the view, therefore, of overcoming the presumption raised by Act 10 that the business of sugar refining is monopolized, that the complainant offers its explanations, in its bill, of how smoothly the course of trade runs in that business.

The bill signally fails to make out a case of the arbitrary conversion, by fiat, of a really private business, into a nominally public one. It signally fails to touch the issue of the monopolization of the business under consideration. It enters the vestibule of that issue, by setting up that the sugar refining business was, what every other business was, in its origin, a purely private business; and it descants upon the theoretical ascendancy of the law of supply and demand, but nowhere does it venture to explain what its own interferences with the law of supply and demand have been, or what has been the effect, upon the originally private character of the business, of its own growth and conduct therein.

There is nothing whatever in the bill which meets, or comes near meeting, such inferences here as those, which, in the **Munn, Brass** and **German Alliance Insurance Company cases,** were the basis or warrant for the assertion of the public interest.

The case for the existence of the public interest in the business of sugar refining might well rest, therefore, upon the failure of the complainant to sufficiently negative the presumption raised by the legislative declaration in Act 10—upon the complainant's failure to show that, in asserting there was a public interest in the refining business, because of the fact of the monopolization thereof, there had been an abuse by the Legislature of that reasonable discretion which must lie behind every valid exercise of the police power.

Needless as it is to look beyond this weighty presumption, and to consider the facts as to the monopolization of the industry, as shown in the answer herein, and in the legislative history of Act 10, we shall do so, very briefly.

We first call the attention of the Court to those facts, touched upon in our original brief in this cause, in connection with our discussion of the complainant's "unclean hands." That statement of the facts, which, as the Court will see, is greatly condensed, is of the fullest application here.

With reference to the same statement of facts, the Supreme Court of Louisiana has said, in **State vs. American Sugar Refining Company**, a recent, and, as yet, unreported case, wherein the State is endeavoring to enforce her anti trust laws against the complainant:

> "The allegations of the petition show that the defendant, from almost the time it entered the State up to the present time, has grossly, deliberately and persistently violated the public policy of the State by a monopoly of the sugar industry and trade; and that, in its unlawful operation, it has oppressed, and is oppressing, and will continue, if allowed to continue at all, to oppress an absolutely dependent public in its use of one of the necessary foodstuffs produced and for sale in the State."

It may be said that the history of the American Sugar Refining Company has been, during the period since its organization in 1891, the history of the sugar refining industry in Louisiana. As part of such history, leading up to the enactment of Act 10 by the Legislature of Louisiana, was the following finding, by the "Hardwick Congressional Committee, appointed by the House of Representatives, in the year 1911, with the Hon. T. W. Hardwick, of Georgia, as Chairman, to investigate the complainant's status in the sugar refining industry:

> "Indeed," says the report, "it seems to us that,

from its organization on January 10, 1891, until 1907, at least, almost every step in the industrial development of the American Sugar Refining Company was a well-considered part of a carefully planned campaign to secure and maintain a monopoly of the interstate trade in sugar, to obtain complete control thereof, and to forestall and destroy the remaining competition therein."

"Since 1907, new influences have controlled the company, and the testimony does not show a continuation of the policy in investing in competing concerns, and it is shown that some of the properties previously acquired have been sold.

"By the above statement, however, your committee does not wish to be understood as entertaining or expressing the opinion that, even since 1907, the American Sugar Refining Company is not existing in violation of the Anti-Trust Law."

Further on in the report it is said:

"So, early in 1892, within a little more than a year after its organization, the American Sugar Refining Company had practically destroyed all competition, and had a practically complete monopoly of the sugar refining business of the United States, controlling ninety per cent of the sugar refining industry."

Further on:

"From March, 1892, up to 1898, the industrial history of the company is simply a recital of threatened competitors forestalled or bought, of actual competitors, when they insisted upon entering the business, either controlled or acquired; of the organization of subsidiary companies and dependent companies, in the place of independent and active competitors; of a powerful monopoly, shrewdly organ-

ized, carefully operated and strongly maintained against all comers."

With regard to Louisiana, the report says this:

"It seems to your committee that the American takes every advantage of the Louisiana producer that the absence of strong competition enables it to take, as might be expected, and that its defense that at least the freight rate to New York (15 points) ought to be deducted from the New York price, for sugar sold at New Orleans, because its New Orleans factory will not refine much more than forty per cent of its purchases of Louisiana raw sugar, was disingenuous and unfair, when we realize that the American, in accordance with its general policy, only buys raw sugar at New Orleans in excess of its requirements for its New Orleans refinery when, in its judgment, raw sugar is a good purchase, and it will be profitable to hold it until the refinery can make a larger profit."

That publicists and political economists have taken "judicial cognizance" of the status of monopoly existing in the sugar trade, as a result of complainant's operations, is a fact of much significance in deciding whether the Legislature of Louisiana abused its discretion in deciding that a state of monopoly existed in that trade, necessitating special regulation. A quotation in **Prof. Ely's** book on **Monopolies and Trusts**, at **page 228**, indicates the well-recognized status of the complainant in the sugar trade, and outlines, with remarkable accuracy, in an article of so general a character, the methods with which complainant conducted its business in Louisiana, and which brought the public opinion of the State to demand the enactment of Act 10:

"The interest of all aggregations of capital in re-

straint of open, free competition in the purchase, manufacture, distribution, and final sale of the products of industry to consumers, is directly opposed to that of the producers of raw materials as well as that of those engaged in the varied branches of commerce which springs from the effort to satisfy their requirements.

"The cornerstone of all these combinations must be the control of the price of raw produce, and the extent of this restraint on prime markets is the measure of success in monopolizing any branch of trade. In the recent investigation of the Sugar Trust, Mr. Searles, its Secretary, testified that, by being the largest buyer, his company had been able to keep down the price of the raw sugar, and thus to make the refined article cheap to consumers and its manufacture profitable to the trust. In all instances where combinations of capital have seized upon and become possessed of the avenues of distribution, the segregated producers of the raw produce have been forced to sell their output at prices which more than counterbalance the 'little economies,' 'the aggregation of brains,' 'the introduction of improved methods,' and 'the cheapened supply to ultimate consumers.' Between these two extremes the margin of profit to the combinations has been sufficient to enrich their stockholders and to furnish a fund to prostitute law in the aggrandizement and perpetuation of their restrictions on commerce.

"The edict of the Tobacco Trust goes forth and the price for the tobacco crop responds. The Standard Oil Company makes the price of refined either up or down, and at the same time directs its purchasing agents what they shall pay for the crude supply. If competition enters the field for raw sugar, for leaf tobacco, or for crude oil, the whole machinery of the combinations who assume to be sugar, tobacco and oil is put in motion to drive out the intruders, and

this is usually accomplished by lowering ultimate markets and forcing prime markets to respond. Under all circumstances, the producers are made the beasts of burden, and the revenues rendered necessary in the subordination of legislation, in the prostitution of courts, and in the manipulation of distributive tolls, become taxes on the producers, and are assessed and collected through reduced prime markets."

Prof. Van Hise, in his work on industrial combinations, entitled **"Concentration and Control,"** lays it down, as a general rule, that control of markets in an industry, through a restraint upon trade, creates a public interest in such industry:

> "The law should declare that businesses which restrain trade, to such a degree as to control the market, by that fact become of public interest. No one can doubt that the greater corporations are just as much affected by the public interest as are the railroads. The United States Steel Corporation, the Standard Oil Company, the American Sugar Refining Company, producing commodities, some of which are required by the larger portion of the population have relations to the public as a whole. The principle has already been recognized by some common-law decisions, and, in consequence, one class of business, which earlier was regarded as purely private, has become a public utility. Elevating grain, as a result of a long contest, was declared to be affected with a public interest, and, therefore, under the same obligations as other public utilities."

It necessarily follows, if the foregoing doctrine be sound, that a Legislature, which may declare the existence of a public interest, because of warehousemen being able to oppress the public, may declare the same fact,

where refiners have acquired the same power for evil.

In **Montague on Trusts, page 183,** this statement of H. O. Havemeyer is quoted:

> " 'I will state broadly,' said Mr. Havemeyer, of the American Sugar Refining Company, 'that when a corporation is dealing particularly in things that are essentially to the benefit of mankind—clothing, fuel, oil, sugar, rice, food—anything which is peculiarly, as I have described it, of a **quasi**-public character, it would be beneficial to the public to have all these under governmental superintendence.' "

Mr. Havemeyer is shown by the record to have been the President of the American Sugar Refining Company (Record, p. 16); but, as we are dealing with legislation, and public history, we feel free to say, without citing a supporting page in the record, that Mr. Havemeyer was the brain and engineer of the American Sugar Refining Company during his lifetime, and that the above statement is entitled to the greatest weight, by reason of his intimate knowledge of the business referred to, and of his long control over it. This statement, alone, is a complete refutation of the American Sugar Refining Company's present insistence that its business is a sacredly private one.

It was quite relevant to the present issue for the State to allege and show (Record, p. 26) that the revelations, concerning the fraudulent practices of the American Sugar Refining Company in buying its raw sugar in Louisiana, took place in the suit wherein the Federal Government is prosecuting the company, under the Sherman law, and that, even under the menace of the penalties of the Sherman law in that suit, there was no explanation whatever

offered by the complainant company of these revelations (Record, p. 26).

It will be seen, from the statement attributed to Mr. Searles, the Secretary of the complainant company, in **Ely on Monopolies**, that he treats it as a matter of course that his company has been able to keep down the price of raw sugar. It was with special reference to that condition that Act 10 declared that a public interest had attached to the refining business.

Mr. Havemeyer, in his frequently-published testimony before the New York Investigating Committee, of which Senator Lexow was chairman, made this fact of the control of the price of sugar by the complainant company even plainer than Mr. Searles did. This testimony was as follows:

> "Q. When you sell in this country, you control the price?
> "A. Yes, sir.
> "Q. And it was organized, as I understand it, with a view of controlling the price and output to the people of this country?
> "A. That was one of the objects of consolidation.
> "Q. And you have succeeded in doing it?
> "A. Yes, sir.
> "Q. That was the principal object in organizing the American Sugar Refining Company?
> "A. It may be said that that was the principal object.
> "Q. To control the price?
> "A. Yes, sir."

The climax of these revelations, coming from the complainant company, as to its system in the using of its monopoly as a contrivance to defraud the producers of

raw sugar, is contained in a letter from the Vice-President of the company, W. B. Thomas, to Mr. Havemeyer, printed in the Record, at p. 46, and from which we take the following passage:

> "The American Sugar Refining Company has no doubt enabled its competitors to buy their raw sugars cheaper than they could have without its existence, and something is owed to us in the way of co-operation on the part of our competitors, to assist in getting our raw supply as cheaply as possible."

And then follows the whole crux and secret of the American Sugar Refining Company's life and goal:

> "In regard to the raw sugar end of the business, what we are after, of course, ultimately, is the margin between raw and refined. **It arouses much less opposition and occasions much less talk if the price of raw sugars is depressed than if the price of refined is advanced, and, if we can secure a reasonable profit through this method, it is better than getting it out of the advance in refined sugars.**"

It will be seen, therefore, that there was nothing arbitrary in the declaration of the Legislature that the sugar refining business had become impressed with a public interest.

The Authorities Supporting the Public Interest in the Refining Business.

The most recent case on the question of the right of the State to regulate a previously private business is the **Pipe Line case, 234 U. S. 561,** where the Court, through Mr. Justice Holmes, said, concerning a monopolized industry:

"Availing itself of its monopoly of the means of transportation, the Standard Oil Company refused, through its subordinates, to carry any oil unless the same was sold to it or to them, and through them to it, on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them, and carried across half the continent a great subject of international commerce coming from many owners, but, by the duress of which the Standard Oil Company was master, carrying it all as its own. The main question is whether the act does, and constitutionally can, apply to the several constituents that then had been united into a single line."

* * * * * * * * *

"* * * Those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipes. The answer to their objection is not that they may give up the business, but that, as applied to them, the statute practically means no more than they must give up, requiring a sale to themselves before carrying the oil that they now receive. The whole case is that the appellees, if they carry, must do it in a way that they do not like. There is no taking, and it does not become necessary to consider how far Congress would subject them to pecuniary loss without compensation in order to accomplish the end in view. Hoke vs. United States, 227 U. S. 308, 323 (57 L. Ed. 523, 527; 43 L. R. A. [N. S.] 906; 33 Sup. Ct. Rep. 281; Ann Cas. 1913E, 905; Lottery Case (Champion vs. Ames), 188 U. S. 321, 357 (47 L. Ed. 492, 501; 23 Sup. Ct. Rep. 321; 13 Am. Crim. Rep. 561)."

The principle was likewise applied to the fire insurance business, in **German Alliance Ins. Co. vs. Lewis, 233**

U. S. 389, where it was said, through Mr. Justice McKenna:

"Is the business of insurance so far affected with a public interest as to justify legislative regulation of its rates? And we mean a broad and definite public interest. In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence which makes the public interest that justifies regulatory legislation. We can best explain by examples. The transportation of property—business of common carriers—is obviously of public concern, and its regulation is an accepted governmental power. The transmission of intelligence is of cognate character. There are other utilities which are denominated public, such as the furnishing of water and light, including in the latter gas and electricity. We do not hesitate at their regulation, nor at the fixing of the prices which may be charged for their service. The basis of the ready concession of the power of regulation is the public interest. This is not denied, but its application to insurance is so far denied as not to extend to the fixing of rates. It is said the State has no power to fix the rates charged to the public by either corporations, or individuals engaged in a private business, and the 'test of whether the use is public or not is whether a public trust is imposed upon the property, and whether the public has a legal right to the use which cannot be denied'; or, as we have said, quoting counsel, 'whether the right to demand and receive service does not exist in the public, the correlative right of regulation as to rates and charges does not exist.' * * *

"Cases are cited which, it must be admitted, support the contention. The distinction is artificial. It

is, indeed, but the assertion that the cited examples embrace all cases of public interest. The complainant explicitly so contends, urging that the test it applies excludes the idea that there can be a public interest, which gives the power of regulation as distinct from a public use, which, necessarily, it is contended, can only apply to property, not to personal contracts. The distinction, we think, has no basis in principle [quoting and citing authorities], nor has the other contention that the service which cannot be demanded cannot be regulated."

Then the Court goes on to consider **Munn vs. Illinois**:

"The principle was expressed to be [referring to Munn vs. Illinois], quoting Lord Chief Justice Hale, 'that when private property is affected with a public interest, it ceases to be **juris privati** only, and it becomes 'clothed with a public interest when used in a manner to make it of public consequence and affect the community at large.' "

After considering **Munn vs. Illinois**, and **Brass vs. North Dakota**, the Court went on to say:

"The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. And they demonstrate, to apply the language of Judge Andrews in the Budd case, 117 N. Y. 27 (5 L. R. A. 559; 15 Am. St. Rep. 460; 22 N. R. 670), that the attempt made to place the right of public regulation in the cases in which it has been exerted, and of which we have given examples, upon the ground of special privileges conferred by the public on those affected, cannot be supported. 'The underlying principle is that busi-

ness of certain kinds holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation.' Is the business of insurance within the principle? It would be a bold thing to say that the principle is fixed, inelastic, in the precedents of the past, and cannot be applied, though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power to recognize a public interest in a business and to regulate it for the promotion of the general welfare than government possesses to-day."

In **Eddy on Combinations, Sections 1048 and 1049**, the question of the right of the State to protect itself against the price-manipulations of a supposedly private business is considered academically:

"But, aside from the economic results of an arbitary advance of prices to an abnormal level, the question whether or not any party who finds himself immediately and disastrously affected by such arbitrary advance of prices has a remedy at law or in equity, is most interesting. It seems to be generally assumed that there is no remedy; that a combination, like an individual or a partnership or a corporation, may sell its goods at such prices as it pleases, and unless the combination is itself illegal, or unless some statutory provision controls, it may charge whatever price it pleases. If this impression be sound, the law is hopelessly inadequate to meet developing conditions, for it involves the conclusion that any man or body of men may obtain the absolute control of any particular industry and arbitrarily bring that industry to a standstill by ceasing absolutely to produce, or ruin those who are dependent upon the industry by arbitrarily advancing prices to

such a point that it is impossible for any one to deal with the combination and to do business at a profit. Whether or not an individual either could or would be permitted to do these things need not be discussed, for the possibility is too remote. An individual may control industries which are so small and unimportant that the action of the individual affects the community very slightly, although it may affect the few who deal with him very materially. It is most patently possible, however, for combinations to secure absolute control of industries which produce articles essential to the life and comfort of the community.

"The answer to the question suggested involves the consideration whether or not combinations which control industries do not become so impressed with a public character as to become in a sense **quasi**-public corporations—that is, corporations akin to telegraph, telephone and express companies. It is true that neither by charter nor otherwise are they granted any special privileges by the Legislature, any privileges which distinguish them from private corporations generally. As a rule, they have no power of eminent domain, nor are they granted any rights or privileges connected with streets or highways, and they are, in fact, simply huge private corporations. But express, steamship and elevator companies, for instance, have no power of emnient domain, and are granted no special privileges, and yet the nature of their business and their relations to the public are such that they are impressed with a **quasi**-public character and are not allowed to arbitrarily conduct their business without regard to the interests and welfare of the community and of those who deal with them. Suppose it appeared that all the producers of anthracite coal were so combined in a corporate combination that they absolutely controlled the market; is it possible the Courts would

view the combination as simply a private corporation and permit it to exercise the same arbitrary discretion over the output and prices that the private producer is permitted to exercise? The question whether or not the corporation is private or **quasi**-public is not to be determined by the provisions of its charter, but by the extent and character of its business. If a combination in process of time acquires control of an entire industry, the effect, as far as the public is concerned, is exactly the same as if the original charter of the corporation recited that the corporation was organized for the express purpose of securing the absolute control of the industry; if a charter contained such recital, the corporation should be held to be impressed with a public character, for the reason that the interest of the public in the creation and organization of such a corporation would far exceed the interest of the individuals participating therein."

How Far Do the Rights of Private Property Extend?

The conditions created by complainant in the sugar trade arouse the principle that, whenever property is used in such a way as to trench upon the rights of society, it becomes impressed with a public interest. For that principle we quote the following from James C. Carter's argument on behalf of the United States, before the Behring Sea Arbitration Tribunal:

> "Now, I have said all I intend to say for the purpose of showing how property, or private, individual property, has its origin; and **I now wish to say something as to the extent of the dominion over things which is implied by the term 'property.' And, first, it is not an absolute dominion. No man and no nation has, under the law of nature, or under the moral law, or in any view consistent with the moral**

order of the world, an absolute property in anything. It is at all times coupled with what may be called a trust for the benefit of mankind. There is no absolute right in any man to anything on the face of the earth. The earth and all its bounties were originally the gift of Almighty God to mankind in general—not to this nation, not to that nation, but to all men equally and alike; and that title, that beneficial title, belongs to all men without exception. Nor does it wholly disappear with the establishment of individual property. The custody of the thing is indeed given to individuals, or to particular nations; but it is at all times accompanied with a trust for the benefit of mankind, for whom it was originally designed, and for whom nature still designs it. Well, now, how is that trust worked out? How shall men all over the earth be enabled to enjoy this beneficial interest which nature originally intended them to have in all the production of the earth? It is through the instrumentality of commerce, which is another result of civilization. It is by means of the exchange of products between different regions of the earth and between different peoples, that all are enabled to enjoy the beneficial interest in the things of the earth which was originally designed by Providence. They could not, indeed, have these products except through the agency of individual property, or national property, and the instrumentality of commerce. Take these seals, for instance. They were intended and created for the benefit of mankind—for mankind in Europe as well as for the people living in the vicinity of the islands where they have their homes."

As to society's intervention into the owner's proprietary sphere, Mr. Carter says:

"And this shows the effort that society makes, not

only to prevent the destruction of property, but to increase it. We restock the rivers; we attempt even to restock the seas—and expend a great deal of money in these attempts. These are efforts, indeed, to preserve the sources of blessings which are in the course of extinction. And see how the use of private property is interfered with! Here is an individual; he may be an idiot, a lunatic, a drunkard, or a spendthrift, having a large property. Does society permit that man to deal with his property as he likes? No. He is likely to abuse it; he is likely to destroy it. He will not manage it well. It is taken out of his control and put into the hands of a trustee. Is it to benefit him particularly? Is it out of tenderness to the feelings, or the convenience of a worthless wretch like him? No; it is for the preservation of society."

When your Honors read how the property of the defendant is being administered, we ask that you consider how its conduct is imparted to its property, according to Savigny:

> **"Property, according to its true nature, is a widening of individual power. It is, as far as tangible things are concerned, an extension of the individual to some part of the material world, so that it is affected by his personality."**

And, according to the Court in **Columbian vs. State, 52 Am. St. Rep. 407 (28 L. R. A. 727 :**

> **"This is a proceeding against property, as well as against the corporation. The property itself is criminal, and can be used only for criminal purposes."**

And according to **Locke:**

"The fruit or version which nourishes the wild

> Indian * * * must be his, and so is his—i. e., a part of him, that another can no longer have any right to it * * *."

And according to **Von Ihering**:

> "In making the object my own, I stamped it with the mark of my own person; whoever attacks it attacks me; the blow struck it strikes me, for I am present in it. Property is but the periphery of my person extending to things."

The Fourteenth Amendment is a barrier against attacks, by legislation, upon the foundations of society. It is not the aegis, under which a school and den of immorality may proceed, with a **de facto** destruction of the foundations of society. As it was put by Mr. Justice Field, for the Court, in **Crowley vs. Christensen, 137 U. S. 86:**

> " * * * But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good license to act according to one's own will. It is only itself, the greatest of all rights, is not unrestricted order and morals of the community. Even liberty freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law. The right to acquire, enjoy, and dispose of property is declared in the Constitutions of several States to be one of the inalienable rights of man. But this declaration is not held to preclude the Legislature of any State from passing laws respecting the acquisition, enjoyment and disposition of property. What contracts respecting its requisition and dispositions shall be valid and

what void or voidable, when they shall be in writing and when they may be made orally, and by what instruments it may be conveyed or mortgaged, are subjects of constant legislation. And, as to the enjoyment of property, the rule is general that it must be accompanied with such limitations as will not impair the equal enjoyment by others of their property. **Sic utere tuo ut alienum non laedas** is a maxim of universal application."

In **Leeper vs. Texas, 139 U. S. 468,** and in **Kemmler's case, 136 U. S. 436,** it was laid down, on the same lines:

> "The Fourteenth Amendment did not radically change the whole theory of the relations of the State and Federal Governments to each other, and of both governments to the people." * * * "It was not designed to interfere with the power of the State to protect the lives, liberties and property of its citizens, and to promote their health, peace, morals, education and good order. Barbier vs. Connolly, 113 U. S. 27, 31 (28:923, 925)."

Summary Process Is Not Violative of Due Process of Law.

It is objected that the summary process provided in Act 10 contravenes the requirements of due process of law.

As to the procedure side of this issue, it is easily disposed of by the authorities, which say that, there being provision for a notice and a hearing, all the requisites of due process of law are present.

Iowa Central R. R. vs. Ioawa, 160 U. S. 389.
L. & N. R. R. vs. Schmidt, 177 U. S. 230.
Standard Oil Co. vs. Missouri, 224 U. S. 287.
Hurtade vs. California, 110 U. S. 516.

As to the property side of this issue, it was said, in **Mugler vs. Kansas, 123 U. S. 623,** through Mr. Justice Harlan:

> "The principle that no person shall be deprived of life, liberty, or property, without due process of law, was embodied, in substance, in the Constitutions of nearly all, if not all, of the States at the time of the adoption of the Fourteenth Amendment; and it has never been regarded as incompatible with the principle—equally vital, because essential to the peace and safety of society—that **all property** in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community."

Discussed from the angle of prohibiting certain uses of property, it was said, of the police power, in the same case:

> "'A prohibition upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property **for lawful purposes,** nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests."

That property may be brought under the ban of the law by the conduct of the owner, just as the owner may bring himself into the hands of the policeman; and that, in such cases, the property may be dealt with, summarily, is so well settled that we hesitate to cite authorities upon the

point; but the philosophic handling of the subject in **Spalding vs. Preston (Vermont), 50 Am. Decisions, 68,** induces us to select the following quotation from it:

> "**One who sets himself deliberately at work to contravene the fundamental laws of civil government—that is, the security of life, liberty, or property—forfeits his own right to protection, in those respects, wherein he was studying to infringe the rights of others.** The man who attempts the life or the liberty of another, forfeits for all time, all right to the protection of his own life, or person; and the person assailed may justly destroy both, if necessary, in his own defense, or if he may be fairly supposed to have esteemed it necessary under the circumstances. **So, too, if any member of the body politic, instead of putting his property to honest uses, convert it into an engine to injure the life, liberty, health, morals, peace, or property of others, he thereby forfeits all right to the protection of his bona fide interest in such property, before it was put to that use.**"
>
> * * * * * * * * *
>
> "**Society, in all these cases and many others, has the right to anticipate, in order that it may prevent, the injury, which is thus threatened.** If it were not so, men, in a social state, would be far more powerless, for purposes of defense, than in a natural state. All will admit the right to restrain a madman, or a mad animal, from committing injury. And is the rational man, or the senseless material, which threatens crime or irreparable injury, less subject to control than the maniac, or his torch?"

This is in line with what Mr. Justice Brown said, for the Court, in **Lawton vs. Steele, 152 U. S. 133,** concerning the police power:

> "It is universally conceded to include everything

essential to the public safety, health and morals, **and to justify the destruction or abatement, by summary proceedings,** of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle, the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyances, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraints of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill-fame, and the prohibition of gambling houses and places where intoxicating liquors are sold. **Beyond this, however, the State may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.''**

The Statute Validly Provides Against the Capricious Discontinuance of a Public Utiltiy.

One of the monopolistic abuses that Act 10 was aimed at was the arbitrary stoppage of the refineries, which, by the abolition of all competing refineries, had become public utilities.

Chief Justice Hale, in his treatise, **De Portibus Maris,** and **Lord Ellenborough,** in **Aldnutt vs. Inglis, 12 East,**

527, laid it down that those who receive goods from the public must do so upon reasonable rates.

If the rates must be reasonable, so also must the **receiving of goods be reasonable**; and one who has made it impossible for others to receive the goods of the public is not at liberty to discontinue, capriciously, or in bad faith, a service which he has contrived shall be indispensable to the public.

There being a monopolized refinery, the public is as much interested in having the refinery operated as the owner. That interest is protected by Sections 8 and 9 of Act 10 in a reasonable way.

In **Eddy on Combinations, Section 1048,** the abstract question as to the validity of Sections 8 and 9 of Act 10 is thus asked and answered:

> "Can such combinations, in the exercise of the rights of their ownership, absolutely discontinue, if they see fit, the production of such goods and articles, or can they so arbitrarily advance prices as to levy tribute from the community, and for the time being make it utterly impossible for those who are compelled to deal with them to do business at a profit.
>
> "The answer to the question suggested involves the consideration whether or not combinations which control industries do not become so impressed with a public character as to become in a sense **quasi**-public corporation—that is, corporations akin to telegraph, telephone and express companies."

The subject is also discussed in **Montague on Trusts, p. 197:**

> "Even when no statutory regulation has been enacted, the common-law rule has come to be that persons professing such businesses have assumed toward

the public certain duties—**they must not retire from the businesses without due notice, they must serve all who ask to be served, with facilities adequate to reasonable demands, without discrimination in cost or quality of service, and at a reasonable price.** These principles, already familiar in their application to railroads, were given wide extension in 1876 by the Supreme Court of the United States, and were applied to the grain elevator business. 'Property becomes clothed with a public interest,' said the Court, 'when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created.' ''

Mr. Montague adds:

> ''Even **in the absence of statute** upon the subject, the **Courts** have come to **treat these businesses as public callings**; and where no charges have been fixed by the Legislature have, nevertheless, required that all charges be reasonable. * * * Already the common law, for public-service companies, to some minds, has assumed shape like this: **'Whenever a business upon which the community has come to depend for its welfare, becomes substantially and permanently controlled by an individual or a combination, such a business becomes a public calling.'** ''

There May Be More Than One Law Against Monopoly.

It is contended by the complainant that, because an Article of the Constitution of Louisiana prohibits monopolies, that a statute, such as Act 10, which regulates a

monopolized industry, is violative of the constitutional Article, because impliedly permissive of what the Constitution prohibits.

In the first place, the constitutional Article did not forbid the existence of an industry, because it had been monopolized! Hence, there is no conflict between Act 10 and the Constitution.

In the second place, a prohibition of an evil in a Constitution cannot be given the unwieldy and boomerang effect of likewise prohibiting efforts by the Legislature to reach the evil by regulating a business where it exists, notwithstanding the prohibition.

A State is not confined to one method of attacking an abuse; else it would not have been held, in **Carroll vs. Greenwich Ins. Co., 199 U. S. 401,** that the State might "apply and work out the policy of the general law in a particular case," and in **City of New York vs. Miln, 11 Pet. 102,** that, after denouncing an offense, and providing for its punishment, it is competent for the State to guard by anticipation against the commission of the offense.

In **Carroll vs. Greenwich Ins. Co., supra,** a special anti-trust law as to insurance companies was held valid, notwithstanding the existence of a general anti-trust statute.

Act 10 Does Not Provide for Dual Office-Holding.

Another question of strictly local law, which is of doubtful cognizance here, is whether Act 10 violates the Constitution of Louisiana, which ordains that there shall be no dual office-holding.

Act 10, it is urged, offends in this respect, by providing that the State Supervisor of Public Accounts shall be **ex-officio** State Inspector of Sugar Refining.

Upon this point we say:

First. We doubt the right of complainant to raise that question in the manner done here. The prohibition contained in the Constitution was enacted for the benefit of the State, and not for individuals, and none but the State should be permitted to raise that question. An officer should not be compelled to try an issue of this important nature in such a collateral way.

In **State vs. Gardner, 42 N. E. 999,** it was held that in a prosecution for offering a bribe to an officer, who was acting as such under a statute, the defendant who offered same could not question the constitutionality of same, the Court holding him to be a **de facto** officer, and that public policy defended him "against collateral attack, and that, therefore, the question of the constitutionality of the statute in question was not before the Court."

In a concurring opinion, Spear, Judge, cites in support of said doctrine **People vs. Weber, 86 Ill. 283; Leach vs. People, 122 Ill. 420; State vs. Carroll, 38 Conn. 449; Mapes vs. People, 69 Ill. 524.** In **Clark vs. Commonwealth, 29 Penn St. 129,** the prisoner had been convicted of murder, and the contention of the prisoner was that the Act of the Legislature creating the judgeship was unconstitutional. The Court held that the Judge was a Judge **de facto,** and, as against all but the Commonwealth, a Judge **de jure.** The Court said:

> "Can the rights and powers of a Judge **de facto,** with color of title, be questioned in any other form than by **quo warranto** at the suit of the Commonwealth? Assuredly not."

In **Campbell vs. Com., 96 Penn. St. 344,** where the accused was convicted of arson, two of the Judges, not

learned in the law, but who had been selected by the people and commissioned, sat with the presiding Judge and participated in the trial and sentence. The validity of the Court was questioned on the ground that the people had no power to elect associate Judges. It was held:

> "That they were Judges **de facto**, and, as against all parties but the Commonwealth, they were Judges **de jure**; and, having at least a colorable title to those offices, their title thereto could not be questioned in any other form than by **quo warranto at the suit of the Commonwealth.** * * * At a subsequent term, in an action in **quo warranto**, brought by the Attorney General, the associate Judges were ousted."

In **State vs. Brooks, 39 An. 817**, also cited in said concurring opinion, and which, in turn, cites other Louisiana cases, the Court held:

> "We do not desire to be understood, however, as intimating that a party charged with crime can be heard to raise an issue that the ministerial and other officers of court, actually and **de facto** acting as such, have no right to such offices. We should never get a criminal tried at that rate. We would commence with a kind of collateral **quo warranto** as to the Judge, and then go on down through the official roster of the court."

In **Ex parte Strang, 21 Ohio St. 610**, Strang had been convicted in the Police Court of Cincinnati and sought release by **habeas corpus** on the ground that the Police Judge, having been appointed by the Mayor under an unconstitutional statute, could not try and sentence him; but the Court held his conviction good, observing:

> "Assuming (without deciding the question) the

power of appointment thus conferred on the Mayor to be unauthorized by the Constitution, yet the person acting under such an appointment would be a Judge **de facto.**"

And that:

"The acts of the officer **de facto,** when questioned collaterally, are as binding as those of an officer **de jure.** * * * It is sufficient if he derives his appointment from one having colorable authority to appoint, and an Act of the General Assembly, though not warranted by the Constitution, will give such authority."

The same doctrine is recognized in **Norton vs. Shelby County, 118 U. S. 425,** where it is said:

"The doctrine which gives validity to acts of officers **de facto,** whatever defects there may be in the legality of their appointment or election, is founded upon considerations of policy and necessity for the protection of the public and individuals whose interests may be affected thereby. Officers are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent possession of their powers and functions. For the good order and peace of society, their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question."

As the State is not here complaining, it does not lie in the mouth of complainant to raise this question, nor would

it seem that the special tribunal provided for in the Judicial Code of the United States, with power to enjoin the execution of the laws of a sovereign State, was constituted to consider such a point as that the head of a department of the State was a **de facto** and not a **de jure** officer.

Second. We say that the Act really intended to shoulder on to the Supervisor of Public Accounts additional duties by making him **ex-officio** State Inspector of Sugar Refining, just, in Louisiana, as a Clerk of Court is made **ex officio** Registrar of Voters.

Act 10 does nothing, in so far as the Supervisor of Public Accounts is concerned, but impose additional duties upon him.

In **State ex rel. Ray vs. Blease, 79 S. E. 247**, the Legislature passed an Act for the exercise, by the State, of its option to call in and pay bonds issued by the State, the Act providing that the Sinking Fund Commissioners, composed of the Governor, State Treasurer, etc., should have authority to exercise the option, the Commission being authorized to hire a clerk. In a proceeding it was set up that the Act violated Section 2 of Article 2 of the Constitution of that State relative to holding two offices. The Court answered this by saying:

> "The answer to this objection is that membership in this Commission is not an office. It merely involves the discharge of duties imposed by law upon the various officers who compose the Commission—duties which are, therefore, merely incident to their respective offices."

In **State ex rel. Crawford vs. Anderson, 155 Iowa, 271 (136 N. W. 128; A. & E. Ann. Cas. 1915A, 523)**, it was said

that the test under the Anti-Dual Office-Holdings Acts was:

> "Whether there is a subordination of one [office] to the other, or an inherent inconsistency between the duties of the two offices, **and the question is one which must be largely determined from a consideration of the duties of each with regard to the public interest.**"

It was, undoubtedly, this distinction which governed the Louisiana Legislature in imposing the duties of Inspector of Sugar Refining upon the Supervisor of Public Accounts. The duties of both are identical—the supervising of accounts; and the super ising of the business of sugar refining is nothing more nor less than an added department to the general supervising of public accounts. The laws look to substance, rather than to form. It cannot be denied that the Legislature could, in form, have added such a department to the office of Supervisor of Public Accounts; and there can be no valid objection to that being done, as in this Act it is done, in substance.

In notes upon the **Anderson case, supra**, in **A. & E. Ann. Cas. 1915A, 528**, the similar case of **State vs. Carter, 174 Ala. 266 (56 So. 974)**, is analyzed, and, concerning it, this is said:

> "Although the Constitution prohibits the holding by one person of two offices at the same time, a statute imposing the duties of a particular office on the occupant of another office is not necessarily in conflict with the prohibition. * * *
>
> "This [Alabama] Act created a separate and distinct inferior court, as expressly authorized by the Constitution; but it did not thereby create any additional office, State, county, or municipal. It merely

provided, in terms, that other officers—the Judge of the Inferior Criminal Court of Mobile County, the Clerk of such court, and the Sheriff or the Coroner of such county—should perform and discharge the duties and functions pertaining to this new court thereby created. It merely conferred new or additional powers and duties upon the officers named. * * *

"It was, in effect, a consolidation of courts, rather than a multiplication thereof. The Constitution does, in effect, inhibit multiplicity of offices, without multiplicity of office-holders—that is, it inhibits one person to hold two or more offices of profit and trust under the same State Government at the same time; but it does not forbid the consolidation of two or more offices, nor does it prohibit the Legislature from imposing additional duties upon, or clothing with added powers, existing officers, nor from withdrawing certain powers and duties from one officer and transferring same to another (with certain limitations or exceptions not necessary to here mention). * * *

"In State vs. Hart (Ind.), 105 N. E. 149, it was held that a statute permitting the appointment of a County Surveyor to the office of County Highway Superintendent did not violate Section 9 of Article 2 of the Constitution, forbidding any one to hold more than one lucrative office at the same time. The Court said: 'It is not necessary to discuss at length the questions raised by appellee of the constitutionality of the provision which permits the appointment of the Surveyor to the office of Superintendent. But it may be said that there can be no doubt of the authority of the Legislature to invest such an officer as County Surveyor with additional administrative duties without violating Section 9 of Articl 2 of the Constitution.' "

So common is it for new duties to be added to an exist-

ing office, without offending the Dual Office-Holding Article of the Constitution in question, that a session of the Legislature is rarely ever held without the designation of some State officer, as charged, **ex-officio** with the duties of some other office; and there can be no explanation of such legislation except on the ground that the Legislature is not prohibited from merging offices, where they are compatible. Going back over the statutes of Louisiana for only ten years back, we find the following designation of one official as **ex-officio** incumbent of some other office:

The Registrar of the Land Office is **ex-officio** Commissioner of Forestry.—Act 113 of 1904, and Act 261 of 1910.

The Governor, the Lieutenant Governor, the Auditor, the Secretary of State, the Attorney General and the Speaker of the House constitute, **ex-officio**, the State Board of Liquidation.—Act 20 of 1906.

The Registrar of Voters is, in all the country parishes, **ex-officio** Supervisor of Elections.—Act 99 of 1908.

The Civil Sheriff and the Registrar of Voters are, in New Orleans, **ex-officio** Supervisors of Elections.—Act 99 of 1908.

The Governor and the Secretary of State constitute, **ex-officio**, the State Printing Board.—Act 184 of 1908.

The Superintendent of Public Schools is, **ex-officio**, Treasurer of all school funds.—Act 17, Extra Session of 1907.

The Supervisor of Public Accounts is, **ex officio**, Sheriff in all cases of vacancy.—Act 251 of 1910.

The Clerk of Court is, **ex officio**, Registrar of Voters.—Act 212 of 1912.

The Secretary of State is, **ex-officio**, member of the State Fire Insurance Board.—Act 174 of 1912.

The Governor and the Attorney General are, **ex-officio,** constituents of the Tuberculosis Commission.—Act 161 of 1912.

The Governor and the Superintendent of Public Education and the Attorney General are, **ex-officio,** constituents of the State Board of Education.—Act 214 of 1912.

The Lieutenant Governor and the Speaker of the House are, **ex-officio, constituents** of the State Tax Commisson.—Act 110 of 1912.

The Governor, the Secretary of State and the Auditor constitute, **ex-officio,** the State Printing Board.—Act 141 of 1912.

The Governor, the Auditor, the Treasurer and the Supervisor of Public Accounts constitute, **ex-officio,** the State Board of Apportionment.—Act 246 of 1913.

If the prohibition against dual office-holding is interpreted in any other way than as forbidding the merger of incompatible offices, it would be a serious drawback to the efficient administration of public affairs.

Third. If the point concerning dual office-holding is considered important, we would point out that that feature of the Act is a mere incidental, and almost immaterial, one, as compared witn its general scope and tenor; hence, it would be necessary to inquire whether, if that feature of the Act be void, the balance could stand. If the designation of the Inspector of Sugar Refining by the Legislature is invalid, the Act is still enforceable, either by taking that feature of it as not written, and thereby devolving the appointment of the inspector upon the Governor, or by taking the Act as having independent provisions which are enforceable without any inspector at all.

If the provision making the Supervisor of Public Accounts **ex-officio** State Inspector of Sugar Refining be taken as not written, the Act should be taken as creating the office of Inspector of Sugar Refining without providing for the filling of the office; and, in that aspect, an original vacancy would exist, which, by the Constitution of Louisiana, must be filled by the Governor.

Articles 71 and **72** of the **Constitution of Louisiana** give the Governor power to fill, by appointment, all vacancies. They read as follows:

> "Art. 71. He shall nominate and, by and with the advice and consent of the Senate, appoint all officers whose offices are established by this Constitution and whose appointments, or elections, are not herein otherwise provided for; provided, however, that the General Assembly shall have the right to prescribe the mode of appointment or election to all offices created by it."
>
> "Art. 72. The Governor shall have the power to fill vacancies that may happen during the recess of the Senate, in cases not otherwise provided for in this Constitution, by granting commissions which shall expire at the end of the next session; but no person who has been nominated for office and rejected shall be appointed to the same office during the recess of the Senate. The failure of the Governor to send into the Senate the name of any person appointed for office, as herein provided, shall be equivalent to a rejection."

It is well settled that, where a statute creates an office, without filling it, a vacancy arises, which must be filled in the same manner as other vacancies.

Walsh vs. Commonwealth, 89 Pa. 419 (33 Am. Rep. 771).
State vs. Askew, 2 S. W. 349 (48 Ark. 82).
State ex rel. Brown vs. McMillan, 18 S. W. 784 (108 Mo. 153).
State vs. Irwin, 5 Nev. 111.
Gormley vs. Taylor, 44 Ga. 76.
Words and Phrases, p. 7261.

As to whether the Act can stand if the provision as to the Supervisor of Public Accounts is eliminated, it is apparent that the object of the law was to regulate the business of sugar refining, and that the Supervisor of Public Accounts is one of the minor means to the accomplishment of that end.

The Fee for Inspecting Sugar Is Not a Tax, and Is Not Void for Want of Uniformity.

It is objected that no provision is made in Act 10 for actual or visual inspection of sugar.

It is plain that it is the business of refining sugar—its buyings, its sellings and its tradings—which the lawmaker has found it necessary to watch. The quality of the sugar has nothing to with the case.

Act 10 Does Not Delegate Any Legislative Power to the State Inspector of Sugar Refining.

Section 6 of the Act authorizes the State Inspector of Sugar Refining to find what evils of monopoly need regulation, and to then promulgate such regulations as may be conducive to that end. The language of the clause giving this authority is as follows:

"* * * he may, also, formulate and promul-

> gate, from time to time, in the same way, such other reasonable regulations, affecting any branch of the business of sugar refining, as may be conducive to the public interest, and to the prevention of monopoly in the business or refining sugar, or the protection of the public from the consequences thereof."

The Act confers executive powers, only, upon the Inspector of Sugar Refining. He is to adopt such regulations as, in the varying and complicated aspects of an enormous business, may be necessary to carry out the declared and established policy of the Legislature. That is a broad and sweeping power, but it is, nevertheless, an executive power, and not a legislative one. In no event, however, could the, as yet, unexercised power of the Inspector be a ground for declaring the Act itself void. If the Inspector transcends the bounds of the authority which may be constitutionally delegated to him, it will be time enough then to declare what he does to be void. Neither the partial invalidity of the Act nor the total invalidity of any regulation adopted in pursuance of it could render the Act itself void.

Concerning the extent to which executive powers may be delegated, it was held, in **Zakonaite vs. Wolf, 226 U. S. 272,** that life, liberty and property are not taken without due process of law, where it is the duty of the subordinate officers of the Department of Commerce and Labor to pass upon the right of a person to remain in the United States.

In **Bradley vs. Richmond, 227 U. S. 477,** the Court said on the subject, through Mr. Justice Lurton:

> "This Court will not interfere because the States have seen fit to give administrative discretion to local boards to grant or withhold licenses or permits to

carry on trades or occupations or perform acts which are properly the subject of regulation in the exercise of the reserved power of the States to protect the health and safety of its people."

In **United States vs. Grimaud, 220 U. S. 506,** it was held that legislative power was not unconstitutionally delegated to the Secretary of Agriculture by the provisions of the Forest Reserve Act, giving him the power to promulgate the extensive code of rules and regulations covering forest reservations. In the course of its opinion, Mr. Justice Lamar said, for the Court:

> "Congress was merely conferring administrative functions upon an agent, and not delegating to him legislative power."
>
> Citing **Butte Water Co. vs. Baker, 196 U. S. 126.**

Concerning a statute fixing a rule, and leaving it to administrative officers to apply the rule, by regulation, as Section 6 of Act 10 does, it was said, in **Plymouth Coal Co. vs. Pennsylvania, 232 U. S. 543,** by Mr. Justice Pitney for the Court:

> "The Legislature has not defined with precision the width of the pillar, and it is very properly admitted that, in the nature of things, this would have been impossible, because the width necessary in each case must be determined with reference to the situation of the particular property. From this it necessarily results that it was competent for the Legislature to lay down a general rule, and then establish an administrative tribunal with authority to fix the precise width or thickness of pillar that will suit the necessities of the particular situation, and constitute a compliance with the general rule. United States vs.

Grimaud, 220 U. S. 506, 517-522 (55 L. Ed. 567-569; 31 Sup. Ct. Rep. 480). Administrative bodies with authority not essentially different are a recognized governmental institution. Commissions for the regulation of public-service corporations are a familiar instance. Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. R. Co., 167 U. S. 479, 495 (42 L. Ed. 243, 251; 17 Sup. Ct. Rep. 896). And it has become entirely settled that powers and discretion of this character may be delegated to administrative bodies, or even to a single individual. Re Kollock, 165 U. S. 526, 536 (41 L. Ed. 813, 816; 17 Sup. Ct. Rep. 444); Wilson vs. Eureka City, 173 U. S. 32 (43 L. Ed. 603, 19 Sup. Ct. Rep. 317); Gundling vs. Chicago, 177 U. S. 183, 186 (44 L. Ed. 725, 728; 20 Sup. Ct. Rep. 633); Fischer vs. St. Louis, 194 U. S. 361, 371, 372 (48 L. Ed. 1018, 1023, 1024; 24 Sup. Ct. Rep. 673); Jacobson vs. Massachusetts, 197 U. S. 11, 25 (49 L. Ed. 643, 649; 25 Sup. Ct. Rep. 358; 3 An.. Cas. 765); New York ex rel. Lieberman vs. Van De Carr, 199 U. S. 552, 560, 562 (50 L. Ed. 305, 310, 311; 26 Sup. Ct. Rep. 144)."

In **Red "C" Oil Mfg. Co. vs. Board, 222 U. S. 378 (56 L. Ed. 246)**, it was said, through Chief Justice White, concerning a similar statute:

"The remaining contention is that the Act is repugnant to the State Constitution, because it attempts to delegate to the Board of Agriculture the exercise of legislative powers. The legislative requirements was that the illuminating oils furnished in North Carolina should be safe, pure, and afford a satisfactory light, and it was left to the Board of Agriculture to determine what oils should measure up to these standards. We think a sufficient primary standard was established, and that the claim that legislative powers were delegated is untenable. But-

terfield vs. Stranahan, 192 U. S. 492 (48 L. Ed. 534; 24 Sup. Ct. Rep. 349); Union Bridge Co. vs. United States, 204 U. S. 364 (51 L. Ed. 523; 27 Sup. Ct. Rep. 367); St. Louis, I. M. & S. R. Co. vs. Taylor, 210 U. S. 281 (52 L. Ed. 1061; 28 Sup. Ct. Rep. 616); United States vs. Grimaud, 220 U. S. 506 (55 L. Ed. 563; 31 Sup. Ct. Rep. 480)."

In **Interstate Commerce Commission vs. Goodrich Transit Co., 224 U. S. 212 (56 L. Ed. 737)**, it was said, through Mr. Justice Day:

"The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress. This rule has been frequently stated and illustrated in recent cases in this court, and needs no amplification here. Butterfield vs. Stranahan, 192 U. S. 470 (48 L. Ed. 525; 24 Sup. Ct. Rep. 349); Union Bridge Co. vs. United States, 204 U. S. 364 (51 L. Ed. 523; 27 Sup. Ct. Rep. 367); United States vs. Grimaud, 220 U. S. 506 (55 L. Ed. 563; 31 Sup. Ct. Rep. 480).

"In Section 20, Congress has authorized the commission to require annual reports. The Act itself prescribes in detail what those reports shall contain. The commission is permitted, in its discretion, to require a uniform system of accounting, and to prohibit other methods of accounting than those which the commission may prescribe. In other words, Congress has laid down general rules for the guidance of the commission, leaving to it merely the carrying out of details in the exercise of the power so conferred. This, we think, is not a delegation of legislative authority."

Inasmuch as the State Inspector of Sugar Refining has not promulgated any regulations, it cannot be decided, now, whether they constitute legislation, or whether they are mere executive applications of a settled legislative policy.

The Prohibition in Act 10 Against Buying Sugar on Ex Parte Tests Is a Valid Police Regulation.

The Act specifies some of the practices of monopoly which are most commonly injurious, and prohibits them. This prohibition is assailed as infringing upon the liberty of contract.

It has been found necessary, in Louisiana, to protect the rights and liberties of the general public, in the sugar trade, by limiting the power of the monopolist to defraud the sellers of sugar, through **ex parte** tests of the quality of the sugar, and through the fixing of arbitrary weights of the packages in which the sugar is sold.

The interference of the police power is as allowable, and as needed, here as in the regulation of the weight of loaves of bread, in **Schmidinger vs. Chicago, 226 U. S. 578,** concerning which it was said, by Mr. Justice Day, in deciding the case:

> "Laws and ordinances of the character of the one here under consideration, and tending to prevent frauds, and requiring honest weights and measures in the sale of articles of general consumption, have long been considered lawful exertions of the police power. McLean vs. Arkansas, 211 U. S. 550 (53 L. Ed. 320; 29 Sup. Ct. Rep. 206); Freund Pol. Power, Secs. 274, 275. Laws prescribing standard sizes of loaves of bread, and prohibiting, with minor excep-

tions, the sale of other sizes, have been sustained in the courts of Massachusetts and Michigan. Com. vs. McArthur, 152 Mass. 522 (25 N. E. 836); People vs. Wagner, 86 Mich. 594 (13 L. R. A. 286; 24 Am. St. Rep. 141; 49 N. W. 609)."

The Penalties of Act 10 Are Not Unreasonable.

The penalty provisions of Act 10 fall within the class of which **Waters-Pierce Oil Company vs. Texas, 212 U. S. 113,** and **Wadley Southern R. R. vs. Georgia, 235 U. S. 651,** are examples, and not within the class condemned in **Missouri P. R. Co. vs. Tucker, 230 U. S. 340; Ex parte Young, 209 U. S. 123,** and **Willcox vs. Consolidated Gas Company, 212 U. S. 19.**

As to the alleged unreasonableness of the penalties themselves, they are less, by half, in their maximum, than the penalties in the **Waters-Pierce Oil Company** and **Wadley Southern Railroad Company cases.**

As to the reasonableness of the penalties, in relation to complainant's business, it will be seen, from the bill, and exhibits, that complainant handles over 300,000 tons of sugar in Louisiana annually, of a value not far from four cents a pound, or $80 a ton. Its business in the State amounts, therefore, to over $20,000,000 yearly. Penalties which may range from $50 to $2,500 a day are not disproportionate to the harm that monopoly may do, or even to the size of complainant's business.

Again, the statute provides for an extraordinarily speedy hearing of all questions arising under it. Under Section 12, any question of law must be taken up in preference over all business, and must be decided by the Judge of first instance within ten days after submission.

Either party cast must appeal within five days; the appeal must be lodged in the appellate court within ten days, and, in the appellate court, the case must be decided within forty days. These provisions remove any possibility of the complainant's property being eaten up in fines, or of complainant being intimidated into submission to the law, in the manner reprobated in **Cotting vs. Godard, 183 U. S. 83.**

The provisions for speedy judicial hearing rather put this case in line with **Wadley Southern R. R. Co. vs. Georgia, 235 U. S. 651,** where it was said that a safe opportunity to obtain a judicial review of any alleged hardships would deprive even an exorbitant penalty of its menace, or of its confiscatory effect.

Besides, since the enactment of Article 226 of the Federal Judicial Code, the dilemma of being forced "to obey what was finally held to be a void order, or disobey what may ultimately be held to be a lawful order," does not so readily arise, as was noticed in **Wadley S. R. Co. vs. Georgia, supra.**

Again, the cases of **Missouri P. R. Co. vs. Tucker; Ex parte Young,** and **Willcox vs. Consolidated Gas Company, supra,** were decided on the theory that the complainants in those cases were under a charter obligation to do business at regular fixed rates, and that they were put under coercion, by the penalty statute, to do business at the rates fixed by the statute. This created a sort of nut-cracking process, which was inherently unfair. There is nothing of the kind here.

As to the penalty against buying sugar on **ex parte** tests of quality, and on false weights, it stands on quite a different basis than the penalties which were held in-

valid in **Missouri P. R. Co. vs. Tucker; Ex parte Young,** and **Willcox vs. Consolidated Gas Company, supra;** because, in those cases, the penalties were held unreasonable on account of the orders they were intended to enforce being of doubtful validity, whereas, here, we submit that there cannot be any reasonable ground of attack upon a penalty imposed upon those who, in a monopolized market, buy, upon **ex parte** tests and upon false weights, commodities which must be tested and weighed before their value can be ascertained.

It was the inherent unreasonableness, either patent or latent, of the orders contested in the **Missouri Pacific, Young,** and **Consolidated Gas Company cases,** which influenced those decisions. Here, the police regulation, against what is, or what may easily be, cheating, is inherently reasonable.

The considerations which governed the result in the **Waters-Pierce Oil Company,** and **Wadley Southern R. Company cases,** seem conclusive here. At any rate, the penalties are detachable, and do not at all involve the validity of the scheme of regulation in Act 10. Upon the point of the separableness of invalid penalties from the balance of a statute, which remains valid, we again cite the **Consolidated Gas Company case, supra.**

The Defendant's Corrupting Influence.

The injury to the State by this monopoly has been, and is, less important on the side of commerce, great as it is, than upon that of morals. We ask your Honors to read, in the record, how respectable citizens became the tools of the defendant; how others bought the right to sell their sugar by first selling themselves, and betraying their

fellow-planters; how loyalty and courage and independence were reduced, along with competition, as far towards zero as the power of the defendant could drive them; and we then ask you to consider how far the operations of defendant have verified the theory as to the chief evils of monopoly expressed by President Cleveland in his Message to Congress on December 7, 1896:

> "Their tendency is to crush out individual independence and to hinder or prevent the free use of human faculties and the full development of human character. Through them the farmer, the artisan and the small trader is in danger of dislodgement from the proud position of being his own master, watchful of all that touches his country's prosperity, in which he has an indvidual lot, and interested in all that affects the advantages of business of which he is a factor, to be relegated to the level of a mere appurtenance to a great machine, with little free will, with no duty but that of passive obedience, and with little hope or opportunity of rising in the scale of responsible and helpful citizenship."

The Anti-Trust Laws Need Reinforcement from the Equity Maxim Prohibiting Attack from Unclean Hands.

When the monopolies of Queen Elizabeth were first objected to, the Queen made an edifying spectacle of yielding to the popular clamor for their abolishment, and the House of Commons received her gracious concession with an emotion out of all proportion to the importance of the event, as seen in the light of the subsequent course of trade in England. **Hume, in his History of England, Vol. 4, Chap. 44,** tells how the Queen, on realizing the

odiousness of the monopolies, sent for the Speaker, and desired him to acquaint the House that she would immediately cancel them, and how the House was overcome with the message:

> "The House was struck with astonishment and admiration and gratitude at this extraordinary instance of the Queen's goodness and condescension. A member said, with tears in his eyes, that if a sentence of everlasting happiness had been pronounced in his favor he could not have felt more joy than that with which he was at present overwhelmed. Another observed that this message from the sacred person of the Queen was a kind of gospel of glad tidings, and ought to be received as such, and be written in the tablets of their hearts."

These monopolies were by patent. They were succeeded, in full estate, by others which had no patent, except such as resulted from decisions like that rendered by the House of Lords in 1892, in the case of **Mogul Steamship Company vs. McGregor, 23 Q. B. 598.** There has been a flood of anti-trust legislation since the House wrote it on the tablets of their hearts that Queen Elizabeth had abolished the monopolies. Their effect is thus described in **Ely on Monopolies and Trusts, p. 243:**

> "If there is any serious student of our economic life who believes that anything substantial has been gained by all the laws passed against trusts, by all the newspaper editorials which have thus far been penned, by all the sermons which have been preached against them, by all the speeches of the politicians denouncing them, this authority has yet to be heard from. Forms and names have been changed in some instances, but the dreaded work of vast aggregation of capital has gone on practically as heretofore."

Such, too, is the view of Mr. Beck, the learned chief counsel for complainant, who, in discussing the Sherman Law before the American Academy of Political and Social Science, said, as reported in the Annals of the Society for 1911:

> "The Sherman Law in its practical enforcement has been, notwithstanding the high purposes, the great skill, and the real effort of the various attorneys general who have had occasion to administer it, little less than a delusion. It has accomplished practically nothing."

The underlying idea in the complainant's case is that all these anti-trust statutes are impertinent intermeddlings with natural laws, impossible of enforcement. True it is that it is impertinence, even in the fiat of a State, to seek to overcome natural laws, but we cannot accept the monopolist's classification of frauds and conspiracies as being natural laws, before which legislative and judicial fulminations are peevish bulrushes in the current of the Nile.

Respectfully submitted,

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Attorney General of Louisiana.

HARRY GAMBLE,
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DONELSON CAFFERY,

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Office Supreme Court, U. S.
FILED
APR 12 1916
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 847.

WILLIAM N. McFARLAND, SUPERVISOR PUBLIC ACCOUNTS OF LOUISIANA, ET ALS., APPELLANTS,

versus

THE AMERICAN SUGAR REFINING COMPANY, APPELLEES.

ADDITIONAL AUTHORITIES FOR APPELLANTS.

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Pullman Car Co. vs. Knott, 235 U. S., 24.

R. G. PLEASANT,
Attorney General of Louisiana;
DONELSON CAFFERY,
Solicitors for Appellants.

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Of Counsel.

(30983)

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OCTOBER TERM, 1915.

WILLIAM N. McFARLAND,
Supervisor of Public Accounts of Louisiana, AND OTHERS,
Appellants,

versus

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA, FROM
DECREE GRANTING INJUNCTION.

BRIEF ON BEHALF OF THE AMERICAN SUGAR REFINING COMPANY, APPELLEE.

JAMES M. BECK,
JOSEPH W. CARROLL,
GEORGE DENEGRE,
HUGH C. CAGE,
FRANK L. CRAWFORD,
Of Counsel for Complainant, Appellee.

C. C. BURGOYNE, 72 to 78 Spring Street, New York.

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SUPREME COURT OF THE UNITED STATES.

No. 847.

OCTOBER TERM, 1915.

WILLIAM N. MCFARLAND ET AL.,
Appellants,

vs.

THE AMERICAN SUGAR REFINING COMPANY,
Appellee.

BRIEF ON BEHALF OF THE AMERICAN SUGAR REFINING COMPANY, COMPLAINANT AND APPELLEE, ON APPEAL OF DEFENDANTS FROM A DECREE OF THE DISTRICT COURT GRANTING A TEMPORARY INJUNCTION PENDENTE LITE.

Statement of the Case.

The American Sugar Refining Company prayed in this Bill in Equity for an injunction, temporary and permanent, against the enforcement of Act No. 10 of the Extra Session of the General Assembly of Louisiana of 1915, upon the ground that the Act violates the Federal and State constitutions.

The Court, consisting of a Circuit Judge and two District Judges under the provisions of Section 266 of the Judicial Code, granted, after a full hearing, a temporary injunction *pendente lite*, and the defendants have taken this appeal from that decree.

The Statute.

The Act (Record, pp. 19–23) provides in substance as follows :

(SEC. 1) That the business of buying and refining sugar is, by its nature and by reason of its monopolization, impressed with a public interest ; and all sugar refineries now and hereafter operating in the State are public utilities.

While "all" refineries are thus denominated as public utilities, the Act in a later section proceeds to exempt many sugar refineries from its operations.

This exemption, however, is not, as incorrectly stated in appellants' brief, an exemption of all "those refiners who plant and grow their own cane, and refine the sugar produced by them." On the contrary, refiners who are also planters, but who produce less than half of the sugar refined by them are subject to the act (See Section 15 of Act, Record, p. 23).

The Act then provides in the next five sections for a minute system of inspection and regulation, which largely strips the business of its privacy, and treats it as a public utility.

Then follows the principal purpose of the Statute, for by Section 7 it is provided that if any refiner shall systematically pay a less price for sugar in Louisiana than he pays in any other State, he shall hereby create against himself a *prima facie* case of violating the criminal statutes of Louisiana, which forbid under penalties of fine and imprisonment any monopolization or restraints of trade.

A violation of this provision also subjects the offender to a fine of $500 per day and to a cancellation of its license.

If the offender be a domestic corporation, its business shall be liquidated; and if a foreign corporation, it shall be ousted and its property sold.

(SEC. 8) That any refinery kept closed for more than one year shall be presumed to have been closed for the purpose of violating the laws against monopolies, etc., and, unless such presumption be rebutted by evidence, the refinery shall be ordered sold; and if not sold within six months, a receiver must be appointed, who shall lease or sell within twelve months; and neither the defendant nor any one having a substantial interest therein may be the purchaser.

(SEC. 9) That if any refiner is charged with a violation of the Act or of any anti-trust law of the State, and shall be or has been made defendant in a suit by the State for forfeiture of charter or for ouster, he may be ruled into court at any stage of the proceedings to show cause why an injunction should not issue or a receiver be appointed, with power to operate his business. As the systematic purchase by such refiner of raw sugar in Louisiana at a less price than the said refiner has paid for such sugar in other markets, creates a *prima facie* case against him, this provision for an operating receiver before the refiner has had his full day in Court, obviously makes the confiscation of the property very easy.

(SEC. 10) That each day's violation of each of the provisions of the Act, and of each regulation made by the Inspector, shall be punished by a fine ranging from $50 to $2,500.

Such fine shall be recovered, and any provision of the Act enforced by the State through the Attorney General, or District Attorney under direction of the Governor or Attorney General.

(SEC. 11) That all "books, letters and other documents (or apparent copies thereof)," of a defendant shall be given full effect without special proof unless rebutted by the evidence.

The same effect shall be given to all reports of Legislative

and Congressional Committees, State and Federal bureaus, departments or commissions, and any record of any State or Federal Court in any legal proceeding to which defendant is or was a party, with reservation (when such record is offered) of the right to cross-examine any witness as to whom there was no opportunity to crossexamine ;

Then follows the important exempting clause, without which the statute could never have been passed, and which the counsel for the State admits was intended to restrict the operation of the statute, so far as possible, to one sugar refining company (the complainant). Section fifteen provides that "the business of refining sugar within the meaning of this Act is hereby defined to be that of any concern that buys and refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, *or that buys and refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it.*"

The Pleadings.

The Bill shows that the complainant is now, and has been since 1891, engaged in the business of sugar refining in Louisiana. The character of its business, extent of its property interests, etc., are detailed in the Bill (Record, pp. 2–4).

The answer in the return of the defendants to the rule to show cause (Record, p. 25) avers that "the complainant comes into court with unclean hands," and therefore has no standing in a court of equity.

This objection is sought to be supported by averments covering more than 56 pages of the record (pp. 25–81) charging many alleged prior offenses against the laws of Louisiana, of the United States and of good morals.

The answer to the averments of the Bill denies the conclusions of law set up by complainant as the basis of the relief claimed, but admits the only

essential substantive facts, namely, (1) that complainant is within the jurisdiction of the State of Louisiana, and (2) that it is a sugar refiner which buys all the sugar which it refines and is, therefore, engaged in the "business of refining sugar" within the meaning of Act No. 10.

Some issues of fact are tendered by the answer, but all such will be found to be irrelevant to the issues tendered by the Bill, which, if sound, entitle complainant to the relief prayed without regard to the truth or falsity of the extraneous facts so alleged by the defendants. The case, therefore, is practically to be treated as if presented on a general demurrer of defendants to the complainant's Bill.

There was no need, therefore, of supporting affidavits. Moreover, under Equity Rule 31, no reply was required and all new and affirmative matter in the answer is deemed to be denied by complainant.

The constitutionality of the statute was elaborately discussed in the Court below in oral argument and lengthy briefs and the three Judges reached the unanimous conclusion that the statute was void as it violated the express prohibition of the Fourteenth Amendment.

ARGUMENT.

The objection that complainant comes into Court with "unclean hands," and is thereby barred from asking relief from the enforcement of an unconstitutional statute, is novel and unsound.

It is difficult, if not impossible, to conceive how a complainant, who only asks the protection of a court of equity against the enforcement of an invalid law, can possibly have "unclean hands" with reference to the assertion of his constitutional rights, because of alleged past crimes, misdemeanors or immoralities, which are merely charged and neither proved nor admitted.

In discussing this question, it should be said in limine that although the American Sugar Refining Company has been continuously in operation in Louisiana since 1891, it has never been convicted under the laws of that State of any offense whatever.

We are prompted to make this remark because of the disingenuous suggestion contained in the appellants' supplemental brief on page 6. The appellants there quote from a recent decision of the Supreme Court of Louisiana in the case of State vs. American Sugar Refining Company, and as quoted without explanation it gives the impression that that Court had adjudged that the American Sugar Refining Company had persistently violated "the public policy of the State by a monopoly of the sugar trade and industry" and that it had "oppressed" and was "still oppressing" the people of the State.

No such judgment has been pronounced by the Supreme Court of the State. While the language from the decision is correctly quoted, the Supreme Court of Louisiana, on a demurrer to the State's petition, simply held that the allegations of such petition stated a good cause of action. and thereupon the case was remanded to the Court below to try the issues of fact.

The apparent attempt in the appellants' brief to convey the impression that either the Supreme Court of Louisiana or any Court of that State has adjudged that the American Sugar Refining Company has violated any of its laws is without any justification in fact.

There are other misleading statements in appellants' brief, to which we refrain from reference only in the interests of brevity, but it is unfortunate that the appellants, by the omission of dates, in their brief create the impression that events, which happened many years ago, are recent in occurrence.

We may also call attention to the fact that the letters, upon which appellants chiefly rely to justify their many charges,

were many of them written between 1892 and 1904, and that the latest of them is dated 1908.

The appellants therefore contend that a Court of equity should grant no relief to the appellee from the enforcement of an unconstitutional statute simply because of alleged transactions, which happened many years before the enactment of the invalid law in question, and this notwithstanding the fact that the appellee does not seek the aid of a Court of equity with reference to any of the alleged transactions.

The rule is old and well settled. A court of equity will not grant equitable relief save to those who do equity; hence, if complainant shows want of equity in its acts or dealings *with reference to the subject-matter as to which he asks the relief*, that court will remit him to his remedy at law.

The rule has been thus stated in *Liverpool & London & Globe Ins. Co. vs. Clunie*, 88 Fed. Rep., 160, 170, where the Court say (italics ours):

> "The maxim that he who comes into equity must come with clean hands has its limitations. It does not apply to every unconscientious act or inequitable conduct on the part of the complainants. The inequity, which deprives a suitor of a right to justice in a court of equity, is not general iniquitous conduct unconnected with the act of the defendant which the complaining party states as his ground or cause of action, but it must be evil practice or wrong conduct *in the particular matter or transaction in respect to which judicial protection or redress is sought.* Woodward vs. Woodward, 41 N. J. Eq., 224, 4 Atl., 424; 1 Pom. Eq. Jur., 399."

To the same purport may also be cited:

1 Pomeroy's Equity Jurisprudence, Secs. 397, 399.

Shaver vs. Heller & Merz Co., 108 Fed. Rep., 821, 834.

Talbot vs. Independent Order of Owls, 220 Fed. Rep., 660, 662.

See also opinion of Court below (Record, p. 85).

It is patent that the illegal acts, alleged in the *ex parte* statement of appellants to have been committed by complainant, are not charged to have done with reference to the matter or transaction as to which complainant asks relief in its Bill. That matter or transaction is simply the threatened interference with complainant's constitutional rights under the color of an invalid statute.

An unconstitutional law is no law. It approaches the absurd seriously to contend that one possessing constitutional rights of liberty and property and equality before the law, may be estopped by alleged past conduct from opposing the enforcement of an invalid law and must suffer its enforcement against him with the consequent deprivation of constitutional rights. If so, there would be one constitution for the just and another for the unjust.

The appellants' contention, carried to its logical conclusion, is that if the complainant has been guilty in the past of any violations of law, it must not only pay the penalties specifically prescribed by law with reference to such violations, but that for all future time a court of equity must be closed to the complainant.

If this be so, then so far as concerns a court of equity and its remedial processes for preventing the enforcement against the complainant of an unconstitutional statute, the Constitution *for all time* is non-existent as to the complainant, although protecting all other classes of citizens. The statement of such a proposition is its own refutation.

The complainant asks nothing of the court that is not of common right to every citizen of the land and that does not enure to the benefit of every citizen, for the complainant simply seeks to vindicate the supremacy of the fundamental law over an invalid statute, and in so doing it is not simply protecting its constitutional rights but is also rendering a public service, for it has always been recognized in the class of cases, where the interposition of a court of equity is asked with refer-

ence to the unconstitutionality of a statute, that the ground of equity jurisdiction, as originally stated in the case of Smyth vs. Ames, 169 U. S., 466, 518, is not merely the fact that oppressive penalties operate as a virtual denial of justice and therefore can be regarded as a true cause of equity jurisdiction, but that such jurisdiction could be based upon the higher ground that the public interest was concerned, when the legislative and executive powers were violating the constitution of the United States in seeking to enforce an unconstitutional law.

This was recognized as far back as Smyth vs. Ames, 169 U. S., 466, although jurisdiction was there rested largely upon the ground of excessive penalties. In that case Mr. Justice HARLAN said, at page 518 (italics ours):

> "Only a court of equity is competent to meet such an emergency and determine, once for all and without a multiplicity of suits, *matters that affect not simply individuals but the interests of the entire community*, as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained."

In the case of *Ex Parte* Young, 209 U. S., 123, which definitely established this higher ground of jurisdiction, Mr. Justice PECKHAM said (pp. 164-5):

> "From all these considerations it is plain that this is not a proper suit for investigation by a jury. Suits for penalties or indictment or other criminal proceedings for a violation of the act, would therefore furnish no reasonable or adequate opportunity for the presentation of a defense founded upon the assertion that the rates were too low and therefore the act invalid. * * * All the objections to a remedy at law as being plainly inadequate are obviated by a suit in equity, making all who are directly interested parties to the suit, and enjoining the enforcement of the act until the decision of the court upon the legal question."

In the case of Cleveland vs. Cleveland City Ry. Company, 194 U. S., 517, Mr. Chief Justice WHITE said at page 531 (italics ours):

> "Respecting the contention that the case presented by the record was not within the jurisdiction of a court of equity, it suffices to say that in view of the controversies, confusion, risks and multiplicity of suits which would necessarily have been occasioned by the resistances of the complainant to the enforcement of the ordinance, *and in view of the public interests and the vast number of people to be affected*, the case was within the jurisdiction of a court of equity."

The most recent case on the subject is that of the Wadley Southern Railway Co. vs. Georgia, 235 U. S., 651. The question arose whether, if the court should enjoin the enforcement of a statute carrying oppressive penalties and at some subsequent date the statute was held to be constitutional, would the State then have a right to recover penalties existing in law even though they might not exist in equity and good conscience. The Supreme Court said at page 662:

> "These cases do not proceed upon the idea that there is any want of power to prescribe penalties heavy enough to compel obedience to administrative orders, but they are all based upon the fundamental proposition that under the constitution penalties cannot be collected, if they operate to deter an interested party from testing the validity of legislative rates or orders legislative in their nature. Their legality is not apparent on the face of such orders but depend upon a showing of extrinsic facts. A statute therefore which imposes heavy penalties for violation of commands of an unascertained quality is in its nature somewhat akin to an *ex post facto* law, since it punishes for an act done when the legality of the command has not been authoritatively determined. Liability to a penalty for violation of such orders, before their validity has been determined, would put the party affected in a position where he himself must at his own risk pass upon the question."

The public policy of the nation has itself determined by statutory law how these questions shall be determined. Section 266 of the Federal Judicial Code recognizes the necessity of providing a method whereby the validity or invalidity of a law could be tested preliminarily without irreparable damage to business interests. This section provides (italics ours) :

> " It is further provided that if before final hearing of such application (the application for a preliminary injunction) a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of the State, to enforce such statute or order, *accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court*, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State."

Then it provides that such stay may be vacated if the State suit is not proceeding with due diligence.

What is the obvious import of such a provision ? It means that Congress has declared it as the public policy of the nation that actions of the class now before the Court shall be tried by three judges and that every corporation has the right to invoke the injunctive relief of the judicial branch of the government as to the unconstitutionality of the statute. It then provides that the United States court should yield precedence, if a suit were brought in the State Court to enforce such statute, *provided the State court granted a stay of proceedings under the statute pending the final determination of the suit.* Therefore, Congress intended that in any case, not plainly frivolous, there should be a stay until the determination of the question at issue had been reached by the orderly process of law through the judicial department of the government. If the State would grant a stay, the Federal court

should keep hands off, saving the right of ultimate appeal to the Supreme Court of the United States. If the State did not so act, the implication is irresistible and the rule almost mandatory that the Federal court shall grant an injunction until the case has reached such final hearing according to due process of law.

Is there in any of these cases and in the statutory rule of policy so recently enacted, any suggestion that a chancellor shall so far exercise an arbitrary moral censorship of any litigant, who has appealed to the court to stay the enforcement of an unconstitutional statute, as to inquire into its past morals or to hold that, if it had been a sinner in the past, it should be barred forever from the court and the Constitution be non-existent for it. If that were so, it would not only unreasonably punish the litigant but would defeat the public ends in the important respect referred to by Justices PECKHAM, HARLAN and Chief Justice WHITE, namely, *that it is to the public interest that the validity of a doubtful statute shall be determined before irreparable injury is done to property interests.*

The Bill (Par. XXI., Record, pp. 13, 14) is thus founded upon an established and well recognized ground of equity jurisdiction. The Louisiana Act No. 10, by its very terms, imposes the most harsh, unreasonable and confiscatory penalties upon any sugar refiner who may undertake to question the validity of the law in any other manner than that in which this complainant has attacked it. To take the chances of violating the letter of the Act and of suffering penalties which in the aggregate, even for a comparatively short while, might amount to nearly the value of the total property invested in the business, is the only alternative remedy, if such can be called a remedy.

The Act, in addition to ouster, imposes possible fines of twenty-five hundred dollars for each day's violation of each of the provisions of the Act and for each of the unknown and limitless future regulations which the Inspector of Sugar

Refining is authorized to make. Unless the validity of the Act can be determined in such a proceeding as this, it can probably never be determined at all, for the reason that no one subject to its terms would, in view of these destructive penalties, dare to contest the Act.

In such circumstances, equity lends its aid by way of injunction against the operation of the law and determines whether constitutional rights are invaded by such law, in order that the persons subjected to such unreasonable penalties may not be compelled to risk their all in making a test by a violation of the law.

It would expand this brief to inordinate length to discuss the cases cited on this point by the appellants Most of them are either State decisions or those of Federal District or Circuit Courts and examination of all of them will show that they are plainly distinguishable from the case at bar; this distinction is emphasized when the only decisions of this Court, cited by the appellant, are considered. These are

Wheeler vs. Sage, 1 Wallace, 518.
Bartell vs. Nutt, 4 Peters, 184.
DeWeese vs. Reinhart, 165 U. S., 386.

In the first of these cases (Wheeler vs. Sage), several partners were engaged in a scheme to defraud and one of the partners attempted to take an unfair advantage of his associates. This Court naturally declined to interfere.

In the second case (Bartell vs. Nutt) an alleged partner attempted to make his associates account to him for one-half of the loss sustained by an unsuccessful and fraudulent attempt to impose spurious vouchers on the Government. Here again this Court naturally held that a Court of equity would not lend itself to assist either of the parties to a crime.

In the third case (DeWeese vs. Reinhart) the plaintiff attempted to profit by his own reprehensible conduct in attempting to secure by a mistake in a land grant certain home-

stead rights, to which he was not entitled. Again this Court declined to lend the remedial aid of a chancellor to this attempt.

In all three cases it will be observed that the transaction as to which a Court of equity refused relief to a party who sought to invoke its remedial powers was one which the Court regarded as against good morals.

FIRST.

THE STATUTE VIOLATES ARTICLE 2 OF THE CONSTITUTION OF THE STATE OF LOUISIANA OF 1913 AND THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT IT BASES THE REGULATION OF THE BUSINESS OF REFINING SUGAR, WHICH IS PURELY PRIVATE, UPON THE FALSE ASSUMPTION THAT SUGAR REFINERIES ARE PUBLIC UTILITIES AND THAT THE BUSINESS OF REFINING SUGAR IS AFFECTED WITH A PUBLIC INTEREST, WHICH ALONE CAN WARRANT REGULATION.

This objection to the Act is based upon the principle that a business is not subject to special governmental "regulation" unless it be affected with a "public interest," and that no such interest exists in sugar refineries or other purely private manufacturing enterprises.

In the discussion of this novel and important question, we trust that the court will recognize the fact that in using the word "regulation" we do not refer to general police regulations, such as the State may impose upon all citizens and corporations under the ordinary police powers, but only such

"regulation", in the narrower or more technical sense of the term, as the State imposes upon a peculiar kind of business enterprises, which are regarded as no longer private but quasi-governmental in character. The complainant can be prevented from selling unwholesome sugar, from risking the lives of its employees, or from doing anything which concerns the peace, safety or morals of the people within the province of police regulation, provided that such prohibition operates on all of a given natural class alike. A law cannot require the American Sugar Refinery to erect fire escapes of a given character and not require others in the same situation to do the same. Police regulations must be uniform, and as long as they are uniform and not arbitrary they are valid, for complainant does not make any pretense that it is beyond the police powers of the legislature. But when we speak of "regulation" in a narrower sense, we mean the power of the State to take from private business its elements of privacy, its liberty of action, and say to it that, within certain limits, the State has an "interest" in the property, and therefore may subject it to a degree of regulation wholly inconsistent with ordinary manufacturing enterprises.

I.

THE TEST OF THE LEGALITY OF LEGISLATIVE REGULATION IS WHETHER THE BUSINESS SOUGHT TO BE REGULATED IS AFFECTED WITH A PUBLIC INTEREST OR IS ESSENTIALLY PRIVATE. THE LEGISLATIVE DECLARATION IS NOT FINAL; THE QUESTION IS ONE OF LAW FOR THE COURTS.

The bare fact that the Legislature has assumed to regulate a particular business does not carry with it the conclusion of the legality of the regulations; were it otherwise, there would be no enforceable constitutional limit to the power of the Legislature; whatever it might say would be conclusive.

The courts, therefore, are not merely empowered, but required—and the jurisprudence to that effect is uniform—to examine the legislative provisions for regulation and to determine whether the business sought to be regulated is one which can be so regulated; in other words, whether the Legislature had the constitutional power to make such regulations. From the case of Munn vs. Illinois, 94 U. S., 113 (decided in 1876), to the present time, this Court has never questioned its own power and duty to examine every regulation, which interferes with property rights, and determine *as a judicial question* whether it is an unreasonable and oppressive interference with such rights.

This principle is essential to the protection of the rights of liberty and property guaranteed by the Federal and State constitutions. If any citation of authorities is necessary to support so fundamental a principle, judicial expression to such effect will be found in the cases hereinafter cited.

II.

SUGAR REFINERIES ARE NOT PUBLIC UTILITIES; THE BUSINESS OF REFINING SUGAR IS NOT AFFECTED WITH A PUBLIC INTEREST.

Act No. 10 declares (Sec. 1, Record, p. 19):

> "That the business of *refining* sugar in the State of Louisiana is hereby recognized and declared to be impressed with a public interest by reason of the nature and by reason of the monopolization thereof; and the sugar refineries now and hereafter operating in the State, in the business of buying raw sugar and manufacturing refined sugar and in the business of manufacturing refined sugar whether the raw sugar is bought or otherwise handled are hereby declared to be public utilities."

The business of refining sugar, involves first the purchase of raw sugars, and of the materials and supplies necessary for

the processes of refining; next the conversion of the raw sugar into the refined products; and lastly the distribution and sale of the refined products.

The public have no "interest" in the business in the special sense which makes it no longer a matter *juris privati.* It is most persuasive that at no time, since the industry was first started, has any State ever declared that the business was affected with a public interest or attempted to regulate it as such.

Is the buying of the raw sugar affected with a public interest? Clearly not, because the Act purports to regulate the business of sugar *refiners* only, and if the sugar buying is the element in which the public have an interest, the Act, to be valid as a regulation, must apply to all sugar buyers, which it does not pretend to do.

The buying of raw sugar is but a preliminary step in the refiner's business. The business is not that of buying raw sugar, but of manufacturing and selling refined sugar. A shoe manufacturer would not be properly designated as being in the business of buying leather; his business is the manufacturing of shoes.

The process of refining is not affected with a public interest. The public have no peculiar interest in the manufacturing activities of the sugar refiner as distinguished from the manufacturing activities of other manufacturers under like conditions.

Of course the State has a general interest in such ordinary and usual police regulations, as the health, morals or safety of the public require. But if it be the hours of labor, hygienic conditions, safety appliances, etc., which are to be regulated, then clearly it is not the business of sugar refining which is to be regulated, but hours of labor, hygiene, safety devices, etc., *the laws as to which must uniformly apply to all manufacturers under like physical conditions in order to be valid.* To such general police laws of uniform operation there is of course no constitional objection.

The sale and distribution of refined sugars are not affected with a public interest. The public has no peculiar interest in controlling such sale and distribution as distinguished from its interest in the control of the sale and distribution of other food products and staples of commerce in common use.

The public has an interest in the purity of sugar offered for human consumption in Louisiana, but the Act is palpably not designed to accomplish that end, for to be valid such a regulation as to purity must perforce embrace all sugars sold for consumption and not merely the sugars produced by the very limited class of refiners subjected to the regulations of the Act.

The total absence from the business of sugar refining of the one element necessarily present in all those kinds of businesses, which are " affected with a public interest " by reason of their nature, is conclusive that the business is essentially private. The absent element is the holding out to render the public some peculiar and special *service* of a quasi-governmental character such as all true public utilities render. Such holding out may result either from a voluntary dedication of otherwise private property to a public use, as a grain elevator, or from the acceptance of State aid or permission, as a railroad, which involves the holding out to serve the public in respect to that for which the State aid or permission has been granted, or from the transaction of some special business, like banking or insurance, in which the ordinary laws of competition fail and the public imperatively require a special form of regulation. In this class a manufacturer has never yet been classed.

Of course we use the expression " holding out to serve the public " in the restricted legal sense, and not in the broad sense in which it may be said that every merchant or manufacturer holds out a standing offer to sell to those who will buy. *If this broad sense were taken, there could be no private business.*

In no case which can be found has it ever been held that a business involving barter and sale and manufacture, is, *as a business*, affected with a public interest. In every case where a business was held to be affected with a public interest, the decision rested upon the principle that the owner held himself out to render a special kind of service to the public, which necessitated the use of his property by the public—in a word, that the owner had dedicated his property to a public use.

Judge COOLEY in his work on Constitutional Limitations (6th Ed., p. 736) says:

> "What circumstances shall affect property with a public interest is not very clear. The mere fact that the public have an interest in the existence of the business, and are accommodated by it, cannot be sufficient, *for that would subject the stock of the merchant, and his charges, to public regulation.* The public have an interest in every business in which an individual offers his wares, his merchandise, his services, or his accommodations to the public; but his offer does not place him at the mercy of the public in respect to charges and prices."

In the case at bar, there has been no holding out to serve the public. On the contrary, the business has always been conducted as a private business. Indeed, it would be difficult to imagine how such a business, involving all of the complex commercial elements of barter and sale and manufacture, depending solely for success upon the skill and judgment of the owner as to its details, could be regarded as dedicated to the public service in the special sense of our constitutional jurisprudence. The business requires no State aid or permission, is free to any one to engage in and to gain or lose according to his capacity to conduct the business.

While the courts have laid down no strict and infallible test by which to determine whether a business is affected with a public interest, it is uniformly recog-

nized that the presumption is that business is private and that good reason must be shown for treating a particular business differently from others and putting it into the exceptional class.

Freund on Police Power, Sec. 373, p. 331;
Munn vs. Illinois, 94 U. S., 139, 140;
People vs. Budd, 117 N. Y., 1;
Budd vs. New York, 143 U. S., 532, 533, 544; dissenting opinion, 549, 550, 551;
Brass vs. Stoesser, 153 U. S., 391, 404;
Millett vs. People, 57 Am. Rep., 873, 874 (117 Ill.);
German Alliance Ins. Co. vs. Lewis, 233 U. S., 406, 407, 412, 414, 415, 416, dissenting opinion, 428, 429.

In none of these cases nor in any case in which this court reached the conclusion that a particular business was "impressed with a public use" was a manufacturing business under consideration. In each of these cases, beginning with Munn vs. Illinois, *supra* (decided in 1876), down to German Alliance Insurance Company vs. Lewis, *supra* (decided in 1914), the business bore some peculiar relation to the public welfare and the right to regulate was based upon such peculiarity.

The case upon which the appellant chiefly relies and which unquestionably is the strongest for his contention, is the very recent case of German Alliance Insurance Company vs. Lewis, *supra*, but even a cursory examination of the decision will show that the two cases are plainly distinguishable. In that case this court held that the business of insurance did occupy such a peculiar position as to justify governmental regulation and that conclusion was predicated chiefly upon four facts:

1. That the contract between the Insurance Company and the insured was not an ordinary commercial contract but that all such contracts were, by reason of the business, necessarily interrelated and interdependent.

2. As the rates of insurance rested wholly in the discretion of the Insurance Company and were adjusted according to well known actuarial laws, there was no "higgling of the market," to use the term of Adam Smith, and the ordinary laws of competition could not prevail.

3. By reason of the large funds which insurance companies accumulated and invested, the business was assimilated to that of banking, as to which a peculiar degree of public regulation had always been required.

4. Insurance Companies had been regulated for many years without question and thus the conception of its public character was more than "an unconsidered impulse" and represented "the universal sense of a people."

None of these elements exist in the case of any manufacturing enterprise, and certainly they do not exist in the manufacture of sugar. The contracts between buyer and seller are not co-related and interdependent. There is the utmost freedom of competition and an incessant "higgling of the market"; the contracts for the purchase of raw and the sale of refined sugar are regulated by the open laws of supply and demand; and lastly, the only "universal sense of a people" which exists with reference to manufacturing enterprises, including sugar refineries, is that they are not impressed with a public use, for no other legislation can be cited which seeks to treat a sugar refinery or other ordinary manufacturing establishment as a public utility.

The declaration in Act No. 10 to the effect that the business of sugar refining is affected with a public interest *by reason of its nature is*, therefore, untenable.

Conscious of this weakness, the draftsman of the Act attempted to fortify the validity of the statute by basing the alleged public interest in the refining business upon a pretended "monopolization" thereof, but this wholly meaningless abstraction does not strengthen the statute.

"Monopolization" by whom? The statute does not say.

If it means that all sugar refiners jointly monopolize the business, it is literally true, but the suggestion becomes an absurdity, for on that pretense all businesses could be regulated, prohibited, condemned and penalized, because all who are engaged in a given business in an absurdly literal sense monopolize that business.

Assuming that this legislative declaration of an alleged monopolization has any intelligible meaning, then a more natural construction would be that those who are in the subjected class and who are by reason of such unspecified monopolization subjected to a peculiar and drastic form of regulation, are the alleged monopolizers. But the absurdity of the statute becomes manifest when it is recalled that the refiner becomes by legislative declaration a monopolizer, not by reason of the relative amount of his business in the sale of refined sugar or his dominating position in the trade, or his trade methods, but wholly by the accidental relation which one part of his raw material bears to another part. In other words, the smallest planter in Louisiana, if he shall buy more raw sugar than he grows cane, *ipso facto* becomes a "monopolizer," even though his proportion of the commerce in refined sugar may not be one per cent. Upon the other hand, if the American Sugar Refining Company should increase its output and to secure the necessary raw material should buy sufficient plantations to ensure a growth of cane in excess of the raw sugar purchased by it, then it ceases to be a monopolizer, although with such extension of its output it might completely dominate the trade in refined sugar.

Moreover the alleged monopolization does not take into account the comparative and always varying amount of business done by the subjected and exempted classes respectively. The exempted class might at any time have a much larger proportion of the refining business than the subjected class.

How then can the subjected class be regarded as a monopoly by mere legislative fiat ?

If the statute means that one refiner, viz., the complainant in this suit, has monopolized the business, then as the act is not restricted in its operation to the complainant, it visits the sins of the guilty upon the innocent and is thus indefensible. Besides the legislative declaration that this complainant has committed the crime of monopolizing the sugar refining business in Louisiana, would then be in substance and form a bill of attainder and therefore void. Under the Constitution and statutes of Louisiana, to monopolize a business is unlawful and no one can be adjudged guilty of this crime except by a formal adjudication of the Judicial branch of the Government, proceeding according to "due process of law." Even though a Legislature could adjudge a citizen guilty of a crime, without a preliminary charge and a full day in Court, yet it cannot be that a Legislature could under our form of Government adjudge that, because one citizen had committed a crime, the status of a whole class, including the innocent and the guilty, should be thereby adversely affected. No such absurdity was ever before suggested in any statute. It reminds one of "Alice in Wonderland."

A business is subject to peculiar regulation, as "impressed with a public use", by reason of its intrinsic nature and not by reason of the fact that one or more individuals, who engage in it, may violate the monopoly statutes. A business that is *juris privati* does not become less so because some one who is engaged in it may by unlawful acts monopolize it. Upon the other hand, a business may be "impressed with a public use", although no element of monopoly exists. Undoubtedly a *natural* monopoly is peculiarly subject to regulation and was the original basis for special regulation, but in this class of cases the monopoly is either one that is granted by the Government or which is inherent in the nature of the business,

as is generally the case with public utilities where the ordinary laws of competition do not have free play.

As the statute does not specify who or when or in what manner the refining business has been monopolized, the most intelligible construction that can be given to it is that it does not refer to any class or to any refiner, but that the sugar business is *inherently* monopolistic in its character.

This Court has always exercised the right to review such a declaration of the Legislature, for in every case of this class, from Munn vs. Illinois down to German Insurance Co. vs. Lewis, the question, which this Court has always passed upon, was whether the Legislature was justified in treating the business as no longer *juris privati*, and in reaching this conclusion it necessarily took into consideration the nature of the business as a matter of common knowledge.

There is nothing in the statute other than the vague declaration and nothing in common knowledge which differentiates the manufacture and sale of sugar from the manufacture and sale of any other staple of commerce. Any one can engage in it ; any one can build a refinery ; any one can buy raw sugar, for in all parts of the world there are open markets for its sale ; any one can refine it and any one can sell it freely in the channels of commerce.

To hold that the manufacture and sale of this very common and ordinary staple of commerce is inherently monopolistic would be to hold that the manufacture and sale of every other staple of commerce is inherently monopolistic and no ordinary business, which is the subject of manufacture and sale, would be any longer *juris privati.*

No longer stride toward universal socialism could well be imagined. Certainly there is nothing in any decision of this Court to justify so great a departure from the theory of our laws and the form of our Government.

SECOND.

THE STATUTE DENIES TO COMPLAINANT THE EQUAL PROTECTION OF THE LAWS AND THEREIN VIOLATES THE FOURTEENTH AMENDMENT IN THAT, WHILE SAID ACT PURPORTS TO REGULATE THE BUSINESS OF SUGAR REFINING, IT UNREASONABLY EXEMPTS FROM SUCH REGULATION CERTAIN CLASSES OF SUGAR REFINERS.

While the pretended object of the Act is to protect the business of sugar refining and the public from monopolization therein, the Act specially exempts from its operation all sugar refiners who may at any time buy and refine less raw or other sugar than the aggregate of the sugar produced by them from cane grown or purchased by them. The classes thus exempted are admittedly sugar refiners and are inherently as capable of monopolizing the business and injuring the public as are those sugar refiners of the classes subjected to the regulation of the Act.

The exemption appears upon the face of the Act. Section 15 provides (Record, p. 23):

> "The business of refining sugar within the meaning of this Act is hereby defined to be that of any concern that buys or refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys and refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it."

It is seen that this Section purports to define "the business of refining sugar within the meaning of this Act"; in other words under the guise of an arbitrary legislative definition the Act in its necessary intendment works an exemp-

tion from regulation of every sugar refiner who does not come within the definition of the business.

The result is that any person in the business of refining sugar, who may at any time buy and refine less raw or other sugar than the aggregate of the sugar produced by him from cane grown or purchased, is not subjected to any regulation whatever. And this though he is a sugar refiner in fact and as much capable of inflicting the injury on the public contemplated by the statute as any one of those arbitrarily selected sugar refiners subjected in terms to regulation.

An exemption which could not have been made in terms, cannot be made by an arbitrary restriction of a natural class through legislative definition.

It is as if a law, which could not accomplish its avowed purpose except by embracing all natural persons, should seek to limit its operation to persons having red hair, by arbitrarily defining natural persons " within the meaning of the act " to be persons having red hair. Certainly a result which cannot be lawfully accomplished directly cannot be accomplished indirectly.

The statement made at page 7 of appellants' brief that the Act excludes " from its operation sugar planters, refining the sugar from their own cane," is entirely erroneous, as a reading of section 15 quoted above clearly shows. Equally erroneous and quite misleading is the language at pages 37 and 38 of the same brief, intended to give the impression that the Act excludes all sugar planters. In fact, the line is drawn not between refiners who do not grow cane, and planters who do, but between two groups of planters (who are also refiners), the distinction between the groups being rested on the purely arbitrary fact of whether such a refiner-planter buys more or less than one-half of the raw sugar he refines.

I.

THOSE OF THE CLASSES EXEMPTED ARE ADMITTEDLY SUGAR REFINERS AND ARE INHERENTLY AS CAPABLE OF MONOPOLIZING THE BUSINESS AND INJURING THE PUBLIC, AS ARE THOSE SUGAR REFINERS OF THE CLASSES SUBJECTED TO REGULATION.

We contend that the business of all sugar refiners is the same in essence; and that the allowance to the favored classes of the privilege of buying as much as fifty per cent. of the sugar to be refined, constitutes an unreasonable classification.

The Act No. 10 carries within itself a complete admission that all business of sugar refining is the same. The framers of the Act were under the necessity of fixing upon an arbitrary percentage of the raw material purchased or grown by a planter-refiner in order to exclude him from the natural class. From the very nature of the determining factor of exemption—an arbitrary percentage of raw material purchased—it follows that the business of all is the same. *The source of the raw sugar used for refining, cannot, by any stretch of the imagination, affect the nature of the business. If a refiner refines raw sugar, he is a sugar refiner without regard to the accidental origin of the raw sugar used.* However obtained, whether grown or purchased, raw sugar is raw sugar. Economically, chemically, or in any other practical respect, the raw sugar utilized by the exempted and the subjected classes is precisely the same.

The only basis of the attempted classification rests upon the purely non-essential fact of the origin of a part of the raw supplies.

Nor can it be contended that there has been an attempt to classify by size, for, even if such a basis of classification can be conceived to be reasonable, *any exempted refiner may at any time become as large as any subjected refiner.*

Any one or more of the favored refiners, individually or in

combination, may by reason of the very advantages which the exemption allows grow to be even larger than any one of the subjected refiners.

Thus a grossly unreasonable discrimination is made by the Act in imposing regulation solely upon the sugar refiner who buys more than fifty per cent. of his raw sugar. It is as if the Act should say in terms to sugar refiners: "You may injure the public by monopolizing the sugar refining business—which privilege is denied all other refiners—provided only you grow or buy the cane out of which you make not more than fifty per cent. of your refined sugar."

Since the *source* of the raw material bears no real or substantial relation to the business of refining sugar, the alleged evils which the Act is designed to reach may result from the operations of any refiner whatever.

Some of the many results of this indefensible attempt to discriminate by a purely artificial classification have been effectively stated by the Court below in its opinion as follows (Record, pp. 84–5):

> "This exempts from the operation of the act any one engaged in the purchase of sugar, though he is also engaged in the business of refining sugar, if he does not carry on that business in Louisiana, and exempts him, though he may carry on that business in Louisiana, if in doing so he does not buy and refine more raw or other sugar than the aggregate of the sugar produced by him from cane grown and purchased by him. One engaged in Louisiana in the business of sugar refining, as defined by the statute, may if he does not buy sugar in any other state systematically pay in Louisiana a less price for sugar than any one else pays in any other state, without subjecting himself to the adverse *prima facie* presumption and penalties prescribed by the act. One engaged in the business of purchasing sugar, if he is not also engaged in the business of refining, may, without violating the act, systematically pay in Louisiana a less price for

sugar than he pays in any other state. One who is engaged in the sugar refining business anywhere else in the world, except in the state of Louisiana, may, without subjecting himself to any of the penal consequences provided for by the act, systematically pay in Louisiana a less price for sugar than he pays in any other state. We cannot conceive of any fair reason for exempting such a person from the operation of the act, and at the same time subjecting to its penal provisions one whose situation and conduct are exactly the same in every particular, except that his refinery is located in Louisiana, while the exempt person's refinery is located elsewhere. *The result is to make the fact of one's ownership of property in Louisiana the test of the criminality of his conduct in buying a commodity in that state.* We take it that a purpose of the statute was to prevent a practice resulting in the undue depreciation of the price of a commodity of the state. But the statute undertakes to prevent such a practice only in the case of certain buyers, leaving beyond the reach of the prohibition other buyers whose practices may be identical and equally harmful in their tendencies. A discrimination between two buyers of a commodity of a state, which results in imputing criminality to the conduct of one of them in making his purchases if he owns property or carries on another business in the state, while exactly the same conduct of another is left free of such an imputation, though he owns the same kind of property or is engaged in the same business, but not in the same place, is not based on any difference between the conduct of the one and that of the other. Those who are attempted to be subjected to the penal provisions of the act are determined by an arbitrary selection, wholly without regard to any difference between their delinquency and that of others whom the statute leaves untouched. This is such a denial of the equal protection of the law as renders the statute invalid and unenforceable."

It taxes human ingenuity to suggest an even half-way plausible justification of such arbitrary classification.

II.

THE ACT PROVIDES NO CERTAIN STANDARD BY WHICH THE INDIVIDUAL REFINER MAY BE CLASSIFIED.

There is no unit of time prescribed by which to determine the classification. The Act is totally silent as to when and with reference to what period of operation the classes are to be formed, and it is thus impossible to determine whether a given sugar refiner is in the subjected class or in the favored class.

In the absence of any time standard whatever, the applicability of the Act to a given refiner would presumably depend upon th character of his transactions from day to day, if not from hour to hour.

To illustrate: On October 1st a refiner *buys* all of his sugar and should, therefore, be subjected to the regulations of the Act. On October 2d, he uses only raw sugar from cane raised or bought by him, and is exempted from regulation.

But even if some definite unit of time be arbitrarily legislated into the Act, then, in the last analysis, enforcement against a particular refiner must necessarily rest upon the refiner's own expectation of coming before the end of the prescribed time within the one class or the other. For if it be attempted to subject him to regulation day by day, who can question his assertion that before the prescribed period of time has elapsed he will be in the favored class and, therefore, not subject to regulation at any time during the entire period?

III.

THE DISCRIMINATIONS OF ACT NO. 10 CAN NOT BE JUSTIFIED AS BEING IN AID OF AGRICULTURE.

The declared object of Act No. 10 is to protect the business of sugar refining and the public from monopoly therein, and no refiner may therefore be legally exempted from the regulations of the Act, unless it be clear that he or they are

inherently incapable of monopolizing the refining business. As has been shown, there is no inherent reason why the exempted classes might not monopolize the refining business. Indeed, they are more likely to monopolize the business than a refiner, who must buy the greater part of his raw material. But the exemption does not relate to the *grower* of cane, for it is cane "grown or *purchased*" by the exempted refiner.

An exemption which may be valid with reference to the particular object of one law, may be grossly unreasonable and unequal with reference to the different object of another law. Whatever may be the power of classification for purposes of taxation, yet, where prohibitory police regulations are under consideration, the acts and contracts of persons generally cannot be condemned, forbidden or regulated as inimical to the public welfare, while at the same time the similar acts and contracts of agriculturists are exempted from the rule of condemnation and regulation. Such a distinction must be justified by some intelligible reason, which would make such a contract of an agriculturist defensible. Here the classification is made with reference to the protection of the public from the effects of the condemned acts and contracts, and the evil effects of such acts and contracts are the same whether practiced and made by an agriculturist or another; hence, the classification is unreasonable—unreasonable, indeed, even though the exemption of the agriculturist purports to be confined to acts and contracts relating solely to products raised by him.

In considering the case of American Sugar Refining Company vs. Louisiana, 179 U. S., 89, upon which the State chiefly relies to support this exemption, the distinction must be kept in mind between a tax law and a law passed in the exercise of the police power for the protection of the people, for an exemption which may be justified in the one case may be grossly unreasonable in the other.

In that case it was claimed that a classification *for pur-*

poses of taxation, which subjected to license taxation sugar refiners generally, was not unreasonably discriminatory because it exempted from license taxation "planters and farmers grinding and refining their own sugar and molasses."

Even in that case, the Court seemed to construe the exemption as reasonable only if confined to the sugars of the planter's own growth.

This Court has recognized this clear distinction between taxation and police regulations, and itself expressly explained and distinguished the case last cited, for in the subsequent and leading case of Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, where this Court held unconstitutional a law of Illinois with reference to monopolies, combinations, etc. in restraint of trade, upon the sole ground of unreasonableness of the exemption therein from the operation of the law of "agricultural products or live stock while in the hands of producer or raiser," this Court (pp. 561-2) discussed the case of American Sugar Refining Co. vs. Louisiana and the earlier case of Bells Gap R. R. Co. vs. Pa., 134 U. S., 232, as follows:

> "In American Sugar Refining Co. vs. Louisiana, we held that a statute of Louisiana exempting from its operation planters and farmers grinding and refining their own sugar and molasses, but which imposed a license tax upon persons and corporations carrying on the business of refining sugar and molasses, did not deny the equal protection of the laws to such persons and corporations as were thus taxed. It was as if the statute had imposed a tax upon the *business* of refining sugar and molasses, and had declared, as reasonably it might have done, that those who only refined their own sugar and molasses should not be regarded as belonging to that class. * * *
>
> "The decision now rendered is not at all in conflict with the views expressed in the two cases just cited. *It is sufficient to say that those cases had reference to the taxing power of the State, and involved considerations*

that could not, in the nature of things, apply to a State enactment like the one involved in the present case. * * * A state may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States. *But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity.* It is one thing to exert the power of taxation so as to meet the expenses of government, and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the State, under its general police power, *to enter the domain of trade or commerce,* and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

The distinction is for present purposes academic, as the Legislature has not assumed in the statute now under consideration to rest the exemption of the favored classes of refiners on the ground of aiding agriculture.

For instance, the Act exempts foreign sugar if bought by the favored refiner, while it does not exempt Louisiana sugar if bought by the subjected refiner.

It exempts sugar made from cane bought or raised by the favored refiner, while it does not exempt sugar made from

cane bought from another by the subjected refiner or raised by him.

On the other hand, the exemption does not apply to any raw sugar—foreign or domestic—bought by the subjected refiner, while it does apply to all raw sugar—foreign or domestic—bought by the favored refiner to the extent of 50 per cent. of his whole refined product.

It is clear, then (assuming the existence of the power, which we have already shown does not exist) that if the Act No. 10 had been designed to foster agriculture, it would necessarily have exempted only Louisiana grown cane and sugar and such results could have been accomplished only by exempting refiners whose entire output is made from the Louisiana sugar.

The rule of 50 per cent. cleavage is of itself a demonstration that the Act was not designed, and is not capable of being construed, as an aid to agriculture.

In Cotting vs. Stockyards Co., 183 U. S., 79, this court recognized an evident attempt to discriminate between "stockyards doing a large and those doing a small business," and held that any discrimination "based simply upon the quantity of business which each may do" was indefensible under the Fourteenth Amendment. In so doing it simply reaffirmed the clear principle of equality as announced by it in the case of Gulf, Colorado and Santa Fe Ry. vs. Ellis, 165 U. S., 150, 159, as follows:

> "A State may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it

cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the expenses of government, and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the State under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates." Connolly v. Union Sewer Pipe Company, 184 U. S., 540, 562.

The leading case, *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., 540, is so conclusive of the case at bar, not merely by the force of its reasoning upon the general rules applicable, but by the force of the analogy of the case itself, that we quote again from the opinion of Mr. Justice HARLAN.

The exemption there considered read that "the provisions of this Act shall not apply to agricultural products or live stock while in the hands of producer or raiser." This Court held that the exemption was unreasonable *and rendered the whole law invalid*, as denying the equal protection of the laws to the classes subjected to the provisions of the statute.

The Court said (pp. 560, 563–5, italics ours):

> "We have seen that under that statute *all* except producers of agricultural commodities and raisers of live stock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals, while agriculturists and live

stock raisers, in respect of their products or live stock in hand, are exempted from the operation of the statute, and may combine and do that which, if done by others, would be a crime against the State. The statute so provides notwithstanding persons engaged in trade or in the sale of merchandise and commodities, within the limits of a State, and agriculturists and raisers of live stock, *are all in the same general class, that is, they are all alike engaged in domestic trade, which is of right open to all, subject to such regulations, applicable alike to all in like conditions, as the State may legally prescribe.*

The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification '*must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis.* * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must, appear not only that a classification has been made, *but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.*' *Gulf, Colorado & Santa Fe Railway vs. Ellis*, 165 U. S., 150, 155, 159, 160, 165. * * *

Returning to the particular case before us, and repeating or summarizing some thoughts already ex-

pressed, it may be observed that if combinations of capital, skill or acts, in respect of the sale or purchase of goods, merchandise or commodities, whereby such combinations may, for their benefit exclusively, control or establish prices, are hurtful to the public interests and should be suppressed, it is impossible to perceive why like combinations in respect of agricultural products and live stock are not also hurtful * * *. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws? It cannot be said that the exemption made by the ninth section of the statute was of slight consequence, as affecting the general public interested in domestic trade and entitled to be protected against combinations formed to contro. prices for their own benefit; for it cannot be disputed that agricultural products and live stock in Illinois constitute a very large part of the wealth and property of that State."

There is a striking similarity in the provisions of the Illinois statute (condemned in the Connelly case) and the Louisiana statute, now under consideration. Of the two the former is the more defensible, for it presented a tangible and clear cut exemption of agriculturists. To assimilate the facts further, suppose the Illinois statute had provided that any one, who was engaged in agriculture to the extent of more than fifty per cent. of any product sold by him, should be exempted, otherwise not. Can it be doubted that the Court would have regarded this as even more artificial and unreasonable?

The Connolly case has never been modified or overruled. On the contrary, it has been reaffirmed in the recent case of International Harvester Co. vs. Missouri, 234 U. S., 199, 215.

The cases on classification, cited in appellants' brief as authorities in support of the constitutionality of the Act in question, can all be readily distinguished.

Many of the cases cited are tax cases, and are distinguish-

able under the authority of *Connolly vs. Union Sewer Pipe Co.* 184 U. S., 540, 563. Such are :

Travelers' Insurance Co. vs. Conn., 185 U. S., 364.
King vs. Mullins, 171 U. S., 404.
Postal Telegraph Co. vs. Adams, 155 U. S., 688.
Magoun vs. Illinois Trust & Sav. Bank, 170 U. S., 283.
Cox vs. Texas, 202 U. S., 446.
Quong Wing vs. Kirkendall, 223 U. S., 59.
Singer Sewing Machine Co. vs. Brickell, 233 U. S., 304.

In the other cases so cited by appellants on this point, the Court found that the classification was based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect of which such classification was imposed, and held that there was no arbitrary selection.

We may briefly refer to these cases :

St. John vs. New York, 201 U. S., 633.

In this case, a New York statute which prohibited the sale of adulterated milk, provided that, where the milk was sold by its producer, proof that the milk was in the same condition as when received from the herd should be a defence; whereas, in the case of a non-producer, *i. e.*, an ordinary city milk dealer, such proof should not serve as a defense. The Court sustained the statute on the ground that, in the case of the farmer, the source of the milk could be certainly traced; whereas, in the case of the ordinary vendor, this would usually be impossible, and that, therefore, to permit the non-producing vendor to take advantage of the defense referred to would lead to evasion.

Central Lumber Co. vs. South Dakota, 226 U. S., 157.

A statute of South Dakota prohibited any one handling any commodity in general use "intentionally for the purpose of destroying the competition of any regular established

dealer in such commodity * * * to discriminate between different sections of this State, by selling such commodity at a lower rate in one section than such person charges for such commodity in another section," freight considered. The statute was sustained, as being within the police power of the State. The Act was clearly constitutional, irrespective of the question of classification ; because the discrimination aimed at was one used intentionally for the purpose of destroying competition. Acts to this effect have been frequently passed by State legislatures and by Congress,—a late example being the Clayton Act—and have been unif rmly considered constitutional.

Watson vs. Maryland, 218 U. S., 173.

In this case, a Maryland statute required all physicians to apply for a license and submit to an examination, &c., except those who had practiced medicine before a certain date and could show that, prior to that date, they had a certain number of patients. This exception was justified by the Court (at page 177), on the ground that men who had practiced a profession for a number of years might be assumed to have qualifications which others were required to show as a result of an examination. The statute, among other exemptions, also excepted resident physicians and students in hospitals, and it was upon their exemption that the stress of the argument for the appellant was put. These latter exceptions were justified, upon the ground that hospitals are the subject of municipal or State regulation or control and that employment in them is by boards responsible to public authority, and hence the supervision necessary for the ordinary practitioner of medicine was not required. It is obvious that there is no likeness between this Maryland statute and the Louisiana Act under consideration.

Carroll vs. Greenwich Insurance Co., 199 U. S., 401.

In this case, the provisions of the Iowa Code prohibiting

combinations of insurance companies as to rates, commissions, etc., were held constitutional under the general power to prohibit combinations, and, in this respect, to be little more than the application to a particular case of the general statute of Iowa concerning combinations. Here, the line was drawn between fire insurance companies and all other callings. There was no discrimination among fire insurance companies, as there is among sugar refiners under the Louisiana Act in question.

Keokee Consolidated Coke Co. vs. Taylor, 234 U. S., 224.

In this case, the Act prohibited "any person, firm, or corporation, engaged in mining coal or ore, or manufacturing iron or steel, or in any other kind of manufacturing" from paying wages by means of scrip convertible into merchandise. The language just quoted is so broad as to distinguish the case from the one at bar, without comment.

German Alliance Ins. Co. vs. Hale, 219 U. S., 307.

Here, the statute was one directed at combinations between insurance companies; but, instead of prohibiting such combinations outright, the statute penalized them by providing that juries, in awarding damages in suits on policies where the defendant company had been connected with a combination, should add twenty-five per cent. to the amount of actual damages awarded. This Court sustained the Act, on the ground that the Legislature could prevent combinations by any means, and therefore by imposing a penalty. There is no likeness between that case and the one at bar.

Williams vs. Arkansas, 217 U. S., 679.

In this case, a statute of Arkansas prohibited drumming or soliciting on trains for business for any "hotels, lodging houses, eating houses, bath houses, physicians, masseurs, surgeons, or other medical practitioner." The second section of the Act also made it unlawful for any railroad or common

carrier to permit such "drumming or soliciting for any business or profession whatsoever," except by agents of transfer companies and news men, who were to be permitted for the convenience of passengers. There was, therefore, really no distinction of classes at all contemplated by the Act. The opinion, however, discusses only the language of the first section, and assume, as a basis for the distinction, that it was to protect travelers from other States, many of whom were ill and were on their way to the Arkansas Hot Springs. This Court said that the class of drummers or solicitors mentioned in the Act were doubtless the only ones who plied their vocation to any extent on railroad trains, and that, therefore, the law makers deemed it unnecessary to legislate against others. The distinction between a large class of drummers, which had been brought into existence by the popularity of Arkansas Hot Springs as a health resort, and who, by their number and persistence, had become an intolerable nuisance, and on the other hand, the relatively small class of ordinary commercial drummers, who seldom, if ever, attempt to solicit on a train, is a natural and reasonable one.

International Harvester Co. vs. Missouri, 234 U. S., 199.

In this case, the Court, in effect, held that labor was not the same as commodities, and also that purchasers of commodities might be regarded as a different class from the manufacturers and sellers of the same, in view of the relative difficulty and almost impossibility of any combination among purchasers. The Court says, at page 213—speaking of the contention of the appellant in this case:

> "Under the principle applied, a combination of all the great industrial enterprises (and why not railroads as well?) could not be condemned, unless the law applied as well to a combination of maidservants or infant nurses, whose humble functions preclude effective combination."

Boseley vs. McLaughlin, 236 U. S., 385.

In this case, a California 8-hour statute for women employees excepted graduate nurses in hospitals. The allegations of the bill showed that graduatee nurses in hospitals are in a separate class from other nurses; that they do not ordinarily perform the work of nursing the sick; but act as overseers or assistants to the medical staff. This made their work peculiar and distinct, and it was obviously within the power of the Legislature "to recognize an exigency with reference to their employment making it advisable to take them out of the general prohibition."

Mo. Pac. Railway Co. vs. Omaha, 235 U. S., 121.

In this case, a municipal ordinance required a railroad company to construct a viaduct across a street in a certain manner. The railroad contended that, by constructing the viaduct in a different manner, the cost would be much less and the result equally beneficial. The Court very properly said:

> "This is done in the exercise of the police power, and the means to be employed to promote the public safety are primarily in the judgment of the legislative branch of the government."

This was not a case of classification at all, and we are at a loss to know why appellant cites it *in extenso* on this point.

Mallinckrodt Chemical Works vs. Missouri, 238 U. S., 41.

Here, a Missouri statute required the filing of a certain affidavit by corporations, which was not required from individuals in the same business. This Court said, at pages 55-6, that, while "corporations may not arbitrarily be selected in order to be subjected to a burden to which individuals would as properly be subject" yet—

> "corporations, unlike individuals, derive their very right to exist from the laws of the state * * * and

they act only by agents. * * * The Legislature may reasonably have concluded that, for these and other reasons, corporations are peculiarly apt instruments for establishing and effectuating those trusts and combinations against which the prohibition of the statute is directed; that their business affiliations are not so easily discovered and traced as those of individuals, and that there was, therefore, a peculiar necessity and fitness in annually requiring from each corporation a solemn assurance of its non-participation in the prohibited practices."

German Alliance Ins. Co. vs. Lewis, 233 U. S., 389.

This case is cited by the appellants because it sustained (at page 418) a statute which distinguished between farmers' mutual insurance companies of a co-operative character and insuring only farm property, and all other insurance companies. This Court pointed out the difference between stock companies for profit and farmers' mutual insurance companies, which were not stock companies, and *were presumably not conducted for profit.* The distinction between this case and the case at bar is obvious.

IV.

THE EXEMPTION INVALIDATES THE ENTIRE ACT.

An exemption which shows the unwillingness of the Legislature to impose a law upon an entire class is necessarily void if its imposition upon a part of such class is unconstitutional. No Court can guess whether the Legislature would have imposed the law upon the entire class, in view of its expressed disinclination to do so.

Upon this point Connolly vs. Pipe Co., 184 U. S., 540, is conclusive. This Court said:

"Looking then at all the sections together, we must hold that the Legislature would not have entered upon

or continued the policy indicated by the statute unless agriculturists and live stock dealers were excluded from its operation and thereby protected from prosecution. The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional as denying the equal protection of the laws to those within its jurisdiction who are not embraced by the ninth section" (pp. 563–565).

THIRD.

THE STATUTE PROVIDES THAT A SUGAR REFINER SUBJECT TO ITS TERMS, WHO SYSTEMATICALLY PAYS IN LOUISIANA A LESS PRICE FOR SUGAR THAN HE PAYS IN ANY OTHER STATE, SHALL BE PRIMA FACIE PRESUMED TO BE A PARTY TO A MONOPOLY OR COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE. SAID ACT VIOLATES THE FOURTEENTH AMENDMENT BY CREATING AN UNREASONABLE PRESUMPTION OF GUILT, AND THEREBY WORKS A DEPRIVATION OF LIBERTY AND PROPERTY AND A DENIAL OF THE EQUAL PROTECTION OF THE LAWS.

I.

THE ACT WORKS A DEPRIVATION OF THE LIBERTY AND PROPERTY OF COMPLAINANT AND A DENIAL TO IT OF THE EQUAL PROTECTION OF THE LAWS IN CREATING AN UNREASONABLE PRESUMPTION OF GUILT.

Section 7 provides:

> "That any person engaged in the business of refining sugar within this State who shall systematically pay in

> Louisiana a less price for sugar than he pays in any other state shall be *prima facie* presumed to be a party to a monopoly or combination or conspiracy in restraint of trade and commerce, and *upon conviction thereof* shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so."

The presumption is, therefore, necessarily predicated upon the arbitrary, unsupported and unreasonable assumption that the value of sugar in Louisiana is at all times and in all places within the State as great as in every other part of the United States. This violent assumption completely ignores the difference of trade conditions, which may and do exist as between Louisiana and other States and as between different points in Louisiana itself; it ignores the unavoidable effect of the law of supply and demand; the difference in price and value as between the primary markets and the ultimate markets, due to cost of transportation and the law of supply and demand, and the inevitable difference in cost of production between Cuban, Java, Hawaian, Porto Rican and Louisiana sugars.

The presumption further ignores the fact that there are many markets for sugar in Louisiana with a necessary difference in prices at the same moment of time, and it also ignores the fact that there are many markets in other States with the same variations in prices, due to natural causes wholly unconnected with monopoly.

The presumption, therefore, to be justified, involves the assumption that there can be but one natural price of sugar throughout Louisiana, regardless of difference in conditions and distance from the consuming market, and that this price must always be as high as the highest in any other part of the United States.

In order to hold the presumption reasonable, the Court must also find that the price and value of sugar throughout the United States is naturally equal and uniform, regardless of

remoteness from consuming centers, the cost of production and the operation of economic laws. When the Louisiana crop comes upon the market and creates an inevitable glut, there is and has always been a difference between the New Orleans and New York prices. This is not a fixed differential but a difference in price which approximates the New Orleans-New York freight rate. The amount of sugar offered for sale by the Louisiana planters during November and December of each year is far in excess of the refining capacity of all the refineries in Louisiana. If it purchases more sugar than is sufficient to run its refinery from day to-day, the Appellee must either store the surplus sugar, or pay the cost of the freight upon the same to its northern refineries. The Appellee, in its bill of complaint (Record, pp. 7–10), stated concisely the economic reasons for this difference in price at certain periods, and showed that it did not necessarily result in a benefit to it equal to the difference, or any benefit whatever. Among others the following reasons are stated (Record, pp. 8, 9):

> " (1) To the extent that the Louisana sugar thus purchased by complainant has been shipped by it to a Northern port, the cost of transportation has substantially equalled the difference in the prices at the two ports.
>
> " (2) A large part of the Louisana sugar purchased by complainant and not so shipped has had to be carried in storage for several months at a time of the year when the price of raw sugar usually declined. Owing to the close connection between the prices of raw and refined sugar in the United States under the action of competition, a decline in the price of raw sugar means a corresponding decline in the price of refined sugar; so that a refiner, who has carried raw sugar on a declining market inevitably loses substantially the amount of such decline when he comes to make and market the refined article. * * *
>
> " (3) The cost of carrying raw sugar in storage, in-

cluding loss in weight, inversion, interest, insurance and other incidentals and storage proper, has been between five and six cents per hundred pounds per month. (Since complainant has built its Chalmette refinery, the storage element of this loss has been materially reduced.)

"(4) Formerly, and down to the time when the Chalmette refinery was opened, a large part of the refined sugar manufactured by complainant in Louisiana was sold in the Central West, particularly in the large cities bordering on the Missouri River, which region was and still is one of the great markets for refined sugar in the United States. Complainant also sold large quantities of refined sugar in the States further north, principally Minnesota, Iowa, the Dakotas, etc. One of the chief incentives for building the costly Chalmette refinery was the desire to continue and extend the sale of refined sugar in the said territory which, by reason of lower freight rates, was more accessible to New Orleans than to the Eastern seaboard. Owing, however, to the great and rapid increase, in States west of the Missouri River, in the production of beet sugar, which now forms about one-sixth of all the sugar of every kind consumed in the United States, and which is always sold at prices below those of cane sugar, complainant has to a great extent been driven out of the Missouri River territory and the more northerly States mentioned. Having thus lost its markets in the Central West, as aforesaid, and it being advantageous to operate said Chalmette refinery up to a certain capacity, in order to keep down the manufacturing expense, complainant has been obliged to send a portion of the sugar refined into States further east, thereby coming into competition with sugar shipped by Eastern refineries. Under these circumstances it has been necessary for complainant, in order to equalize freights, to absorb a portion of the freight on all the sugars so sold in such remote markets."

To escape the presumption created by the Act, the refiner is forced, if he buy in Louisiana and elsewhere, to pay in

Louisiana, regardless of the economic conditions there prevailing, the highest price which the market conditions of any other market require him to pay in such other market. The only alternative is for such refiner to forego purchasing either in Louisiana or in all other markets.

This presumption applies solely to a refiner who buys both in Louisiana and elsewhere; if the Louisiana refiner buy only in Louisiana no such presumption is created against him, however little he may pay for the Louisiana sugar as compared with the price in other markets and however different may be the prices which he pays in different markets of Louisiana itself.

A presumption which ignores all of the inevitable workings of the laws of trade is necessarily unreasonable and, therefore, illegal.

While the right of a legislature to create presumptions is not denied, it is elementary that all presumptions created must be reasonable, and must have for their foundation human experience and observation; and this can not be said of the presumption created by this Act.

Every presumption which has stood the test of the Courts has been based upon a natural and reasonable connection between the act which gives rise to the presumption and the presumption itself.

The principle has been aptly stated by the Supreme Judicial Court of Massachusetts as follows:

> "As to the provision in the 5th section of the proposed act, that working more than eight hours in any one day shall be *prima facie* evidence of the violation of the statute, there is difficulty. There are many statutes in which the legislature has enacted that the existence of a fact which ordinarily creates a strong probability of the commission of an offense should be *prima facie* evidence of guilt, and such statutes have been held constitutional. *Com. vs. Williams*, 6 Gray, 1; *Com. s.v Pillsbury*, 12 Gray, 127; *Com. vs. Rowe*, 14 Gray, 47;

Com. vs. Barber, 143 Mass., 560, 562, 10 N. E. 330. The provision of this section of the proposed act differs from those referred to in these decisions, and is not within the principles on which the cited cases rest. Under this act, ' in cases where a Saturday half holiday is given,' employees may work more than eight hours on any other days of the week. Such cases will be common, and, in all of them, work for a longer time than eight hours on any other day will not indicate a probability of violation of the law. To provide that such a fact shall constitute *prima facie* evidence that warrants a finding of guilt beyond a reasonable doubt would be contrary to fundamental principles of criminal law. See opinions in *Com. vs. Williams*, 6 Gray, 1.

We are of opinion that the legislature has no constitutional authority to punish any citizen merely upon evidence of the existence of a fact which in ordinary cases has no tendency to establish guilt." Opinion of the Justices, 208 Mass., 619, 94 N. E. 1044, 34 L. R. A. (N. S.) 771.

While it is true that the statute does not impose *directly* upon the subjected refiner this artificial parity of prices, yet it does so quite as effectually, though indirectly, for it compels the subjected refiner to maintain this enforced parity under penalty that his failure to do so will create against him a *prima facie* case of a criminal offense.

The Court will in this, as in all cases, look to the substance and obvious purpose of the law rather than merely to its form. No mere jugglery of words will prevent a Court from determining the essential nature of an invalid statute. As the statute in a later provision permits the Court to grant *pendente lite* an operating Receiver, it is obvious that if the subjected refiner shall create a *prima facie* case of monopoly against himself, he will be in manifest danger of having his property taken from him by a Receiver even before final judgment. Thus the subjected refiner faces the reasonable danger of confiscation if he exercises

the natural right of a trader to buy in the open market at natural market prices. Moreover, as a *prima facie* case carries with it a conclusion of guilt beyond a reasonable doubt, unless overborne with countervailing proof, it follows that if a refiner exercises this natural liberty of contract to buy at the market, he thereby runs the risk of establishing against himself a conclusion that he has been guilty of monopolizing the trade, although it is too clear for contradiction that any trader might systematically pay a less price for sugar in Louisiana than he pays in other markets without in any sense monopolizing the sugar refining business.

The statute must therefore be regarded as an intended although indirect attempt to compel the refiner who buys sugar in the different markets of the United States to pay as much for Louisiana sugar as he pays elsewhere, and whenever sugar is cheaper in Louisiana than anywhere else, he must either pay more than the market price in Louisiana or abstain from buying in other markets, for normally he cannot expect to get sugar in other markets at less than the market prices.

Section 7 therefore raises the very direct question whether the State can by legislative fiat compel parity of prices in a staple of commerce between its markets and those of other States. In this respect the statute is without any precedent in the legislation of the United States.

To find a precedent for such an arbitrary interference with the liberty of contract it is necessary to go back to the reign of Edward II., when English liberty was more theoretical than actual. In 1350, Parliament provided that

> "butchers, fishmongers, brewers, bakers and others, and all other sellers of all manner of victual, shall be bound to sell the same victual for a reasonable price, *having respect to the price that such victual be sold at in the places adjoining.*"

This was followed by a mass of legislation, which sought to fix by legislative fiat the prices of commodities and the wages of labor, but even in those days of tyranny this legislative experiment proved a failure and was altogether abandoned upon the coming of the more "spacious days" of Queen Elizabeth.

It is true that in our Revolutionary War, when our currency was worth eight cents on the dollar and general anarchy prevailed, the Commonwealth of Massachusetts passed a similar statute:

> "That the prices of all articles produced in America, hereinbefore enumerated, excepting those to which the prices of transportation are affixed, *shall be taken and deemed to be prices of such goods and articles in the town of Boston*, and that the selection and committees of the several towns in this state shall be and hereby are empowered to affix and settle in their respective towns what such articles and goods shall be sold for in their towns respectively, according to the proportion the price such goods have borne in such towns *with the price they have been at in the town of Boston.*"

This, too, was repealed in the year 1777 as impossible of enforcement, and from that time until the Legislature of Louisiana passed the statute now under consideration no Legislature of any American State has ever passed a law which attempted by mere legislative fiat to compel a purchaser to pay the same price in varying markets.

Referring to these ancient restrictive laws, which apparently were the model for the draftsman of the present Act, Mr. Justice LAMAR, in his dissenting opinion in the case of German Insurance Company vs. Lewis (233 U. S., 389), said:

> "It is needless to say that these laws were felt to be an infringement upon the rights of men, that they were bitterly resisted by buyer and seller, by employer

> and employee, and were a source of perpetual irritation often leading to violence. But the fact that the English parliament had the arbitrary power to pass such statutes made them valid in law, though they were in violation of the inherent rights of the individual. In time the great injustice in this was so far recognized that these laws, fixing the price of strictly private contracts, seem to have been repealed, and Lord Ellenborough, while enforcing as proper a rate for public wharves, was able to say in Allnut vs. Inglis, 12 East, 527, 538, '*that the general principle is favored both in law and justice, that every one may fix what price he pleases for his own property or the use of it.*' But what was a favor in England, that might at any time be withdrawn, was in this country made a constitutional right that could not be withdrawn. For although the practice of fixing prices may have prevailed in some of the colonies 'up to the time of independence,' yet, as Judge COOLEY says, since independence, '*it has been commonly supposed that a general power in the state to regulate prices was inconsistent with constitutional liberty.*' That common supposition is rightly founded on the fact that the constitution recognizes the liberty to contract and right of private property. They include not only the right to make contracts with which to acquire property, but the right to fix the price of its use while it is held, and the further right to fix the price if it is to be sold. To deprive a person of either is to take property, since there can be no liberty of contract and true private ownership if the price of its use or its sale is fixed by law. That right is an attribute of ownership."

In Budd vs. New York, 143 U. S., 517, this court (p. 535) approved the reasoning of the Court of Appeals of New York, in holding that

> "no general power resided in the Legislature to regulate private business, prescribe the conditions under which it should be conducted, *fix the price of commodities* or services or interfere with freedom of contract,"

and further (p. 532) approved the more direct statement that

> " the merchant, manufacturer, artisan and laborer, under system of government, are left to pursue and provide for their own interests in their own way, untramelled by burdensome and restrictive regulations, which however common in rude and irregular times, are inconsistent with constitutional liberty ".

What is value? A state of mind. Market value represents the composite state of mind of many buyers and sellers and depends on a thousand contributing circumstances. It depends on the relative desires of the buyer and seller. Given three buyers and one seller, you have high prices. Given three sellers and one buyer, you have low prices. In New York at a given time there may be three buyers and one seller, while contemporaneously there may be in New Orleans three sellers and one buyer. How then can the Legislature provide that in these two markets, the buyer must pay the same price?

It is an economic principle—other factors being equal—that the price of a commodity is less at the source of production than at the point of consumption. Necessarily the element of cost of transportation is an essential item in the total cost of an article and differences in prices between the place of production and the point of consumption will, in the absence of extraordinary circumstances, equal the freight rate.

Shortly after the statute in question was enacted, the Appellee made an investigation of the prices of certain of the leading staples produced in the United States, for the purpose of comparing the prices in the larger cities near the points of production with the prices of the same staples in New York City. The investigation was made in August 1915 and prices were taken as of the 17th of that month and covered cotton, flour, wheat, corn, rice, oats, rye and butter. Appellee was careful to make the comparison of similar grades in wholesale lots and sales made under similar conditions, and the result

was that the differences in prices were found to approximate the freight rate from the point of production to the point of consumption.

On August 17th the price of middling cotton in New Orleans was 9c. the price at New York was 9.25c. The freight rate from New Orleans to New York was 25c. for compressed cotton and for uncompressed 30c. The price of cotton futures on that date were as follows :

	New Orleans.	*New York.*
October	9.09c.—9.10c.	9.29c.—9.30c.
December	9.35c.—9.36c.	9.58c.—9.59c.
January	9.49c.—9.50c.	9.69c.

The difference in these prices runs from 20c. to 23c. or very nearly the freight rate.

A similar comparison was made for rice. It was found that the New York prices exceeded those of New Orleans by from one-half to three-quarters of a cent per pound.

An investigation was also conducted into the prices of wheat in the larger Western Cities and comparison was made between the prices there and those in New York City. On the date named wheat was selling at Minneapolis for September delivery at 1.04⅜c. to 1.04⅞c. The bid in New York City was 1.15¼c., or a difference of about 11c. The freight rate from Minneapolis to New York was 14c. The price of wheat in Minneapolis was lower than in Chicago, Duluth, Kansas City, Toledo or Baltimore, but higher in New York City than in any of the other cities named.

The grades of flour for which quotations were investigated were " Pillsbury's Best " and " Gold Medal." New York was found to be 5c. per eighth barrel bag higher than Minneapolis, the freight from Minneapolis to New York being 5¾c.

The prices of No. 2 Yellow Spot Corn were examined in Chicago, Kansas City, New Orleans and New York. The Kansas City price was 79c., Chicago 81c., New Orleans 87c.,

and New York 89c. per bushel, the freight rate from Chicago to New York being from 8¼c. to 9¼c.

The investigation into the prices of No. 3 white oats, No. 2 rye and extra creamery butter also showed higher prices in New York City than in Western cities near the points of production.

In fact in the case of every staple investigated, it was found that prices near the source of production were less than the prices in New York City. If this statute is upheld, the Legislatures of Minnesota, Illinois and Kansas would be warranted in passing statutes providing that the paying systemmatically of less prices for their staples than for similar staples in other States would be *prima facie* proof of conspiracy.

The sugar of Louisiana all comes on the market about the same time and is pressed for sale because temporarily in excess of demand. Can any law expect the buyer to say to the seller under these circumstances: "You offer sugar to us at 4.90, and our competitors are buying from you at that price, but in New York it is quoted at 5.02 and we will pay you 5.02 in New Orleans?"

If a refiner does not buy in other markets than Louisiana, he need not comply with this law; he pays any price he pleases. If we have to obey the law and pay the New York price and the other refiner or planter does not, how can we compete?

Capital is free. We have no statutory immunity against competition in Louisiana. A new Company could build new refineries, and if it buy only in Louisiana, it can secure its raw material cheaper than we can, and the price of refined sugar is always based upon that of the raw.

We are obliged to do one of two things, either to conform all of our buying throughout the country, no matter how different the conditions and the offerings, to the prices at New Orleans, or we are obliged to pay in New Orleans an arbitrary

price, while our competitors, who do not buy in other states, buy freely at the natural market price.

This naturally leads us to our next point as to the inevitable inequality in the conditions of competition which the enforcement of the law would bring to pass.

FOURTH.

THE STATUTE, IN COMPELLING THE SUBJECTED REFINER TO PAY AN ARBITRARY PRICE FOR LOUISIANA SUGAR AND AT THE SAME TIME PERMITTING HIS COMPETITORS, THE EXEMPTED REFINERS, TO PURCHASE LOUISIANA SUGAR AT THE LOWEST MARKET PRICE, VIOLATES THE FOURTEENTH AMENDMENT IN DENYING THE COMPLAINANT THE EQUAL PROTECTION OF THE LAWS.

It is the vice of this Act that the exempted sugar refiner may buy his raw sugar at any price he pleases, having full freedom of access to the open markets where natural prices measure the composite mind of buyer and seller, while the subjected refiner is practically coerced into paying for his raw material the highest price then prevailing in any market of the country. This places him at an obvious and serious disadvantage.

The situation could not be better stated than in the opinion of the lower court :

> " That the statute in question is a case of arbitrary selection by those who are sought to be made the victims of the penalties it prescribed in the absence of any 'fair reason for the law that would not require with equal force its extension to others whom it leaves untouched '

we think is demonstrated by a statement of its methods of selecting those engaged in the sugar trade who are to be subject to its provisions and of distinguishing them from others engaged in the same business whom its leaves untouched. *A prime object of the statute*, plainly disclosed by its provisions, is to prevent a very limited class of persons or corporations engaged in the business of refining sugar in Louisiana from systematically paying in Louisiana a less price for sugar than they pay in other states, and to force them into the practice of paying as much for sugar bought by them in that state as they pay in any other state by subjecting their refineries to seizure and sale if they discontinue the purchase of sugar in Louisiana in the way contemplated by the act. * * * *This provision is the heart of the statute.* Other provisions are but means for enforcing the requirement of this one. If this provision is stricken out the statute is practically inoperative. * * * "We take it that a purpose of the statute was to prevent a practice resulting in the undue depreciation of the price of a commodity of the state. *But the statute undertakes to prevent such a practice only in the case of certain buyers, leaving beyond the reach of the prohibition other buyers whose practices may be identical and equally harmful in their tendencies.* A discrimination between two buyers of a commodity of a state which results in imputing criminality to the conduct of one of them in making his purchases if he owns property or carries on another business in the state while exactly the same conduct of another is left free of such an imputation, though he owns the same kind of property or is engaged in the same business, but not in the same place, is not based on any difference between the conduct of the one and that of the other. Those who are attempted to be subjected to the penal provisions of the act are determined by an arbitrary selection, wholly without regard to any difference between their delinquency and that of others whom the statute leaves untouched. This is such a denial of the equal protection of the law as renders the statute invalid and unenforceable."

The basic principle of our institutions is equality of opportunity. The very phrase "the common law" was explained by Lord COKE to mean "the law common to all." Indeed this concept of liberty is older than Anglo-Saxon law, and the power of the judiciary to nullify a law, which grossly violates the principle of equality or common justice, can be found in other civilized countries and even traced back to the Roman law in the time of the Empire.

In England, whatever may be the present theory as to the omnipotence of Parliament, it was the principle of the common law, as laid down by Lord COKE in Bonham's case (8 Coke Reports, 114) that the

> "common law will control acts of Parliament and sometimes adjudge them to be utterly void; for when an act of Parliament is against *common right* and reason or impossible to be performed, common law will control it and adjudge such act to be void."

This doctrine had in subsequent cases the approval of three succeeding Lord Chief Justices (HOBART, HOLT and POPHAM) and was recognized as law in Bacon's Abridgement, Comyn's Digest and Vinar's Abridgement. Even the honeyed Toryism of Blackstone gave it some recognition in the immortal Commentaries.

So far as Anglo-Saxon jurisprudence is concerned the basic principle of equality under the law can be traced back at least to Magna Charta, for "the law of the land," later called "due process of law," (and in that verbal form made a part of our Constitution) had as its most substantial element the concept of equality.

The origin of the concept is only of academic interest, for the Fourteenth Amendment made it a constitutional principle in providing that the State could not deny to any citizen the "equal protection of the laws."

No application of this great principle is more important than

that the law shall not arbitrarily create inequality in commercial competition. It may not, without substantial reason, favor one man in commerce and handicap another. "A fair field and no favor" is the theory of competition and no form of inequality could work greater mischief than for a law to give to one class of competitors the fullest freedom in the purchase of raw material while handicapping another in this respect.

Counsel for appellant have freely admitted that this statute, while general in its terms, is yet aimed directly and deliberately at one corporation, the appellee. *Knowing that the appellee has refineries in many States and must purchase its raw material in many markets, the law deliberately seeks to compel the appellee to purchase the raw material for its Louisiana refinery at an artificial price, while permitting its competitors to purchase their raw material at the natural or market price.*

FIFTH.

THE STATUTE, IN SEEKING TO COMPEL THE SUBJECTED REFINER EITHER TO PAY AN ARBITRARY PRICE IN THE LOUISIANA MARKETS OR TO DESIST FROM THE PURCHASE OF SUGAR IN THE CHANNELS OF INTERSTATE AND FOREIGN COMMERCE, PLACES A BURDEN UPON THE RIGHT TO ENGAGE IN SUCH INTERSTATE AND FOREIGN COMMERCE.

The bill in equity shows that a very material part of the raw material for complainant's Louisiana refinery it imports from Cuba. It buys from Cuba and brings it here and refines it, and also buys at other ports. It is engaged in foreign commerce when it buy sugar in Cuba and bring it to New Orleans, and it is engaged in interstate commerce when it ships refined

product from New Orleans to many states of the Mississippi valley.

In the last four years it bought thirty-eight per cent. of its sugar in Louisiana in 1910; thirty-five per cent. the next year; twenty-five per cent. the next year, and only eighteen per cent. the next year. So that only eighteen per cent. was bought in the state of Louisiana and eighty-two per cent. elsewhere in 1913.

The chief evil that called the constitution of the United States into being is again illustrated by what is attempted by this statute. The fathers of the republic were familiar with restrictive trade statutes.

The situation is thus described by James Madison in his introduction to the Journal of the Federal Convention:

> "The same want of a general power over commerce led to an exercise of the power separately by the States, which not only proved abortive, but engendered rival, conflicting, and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighboring ports, and to coerce a relaxation of the British monopoly of the West Indian navigation, which was attempted by Virginia, the States having ports for foreign commerce, taxed and irritated adjoining States trading through them, as New York, Pennsylvania, Virginia, and South Carolina. Some of the States, as Connecticut, taxed imports from others, as from Massachusetts, which complained in a letter to the executive of Virginia, and doubtless to those of other States. In sundry instances, as of New York, New Jersey, Pennsylvania, and Maryland, the navigation laws treated the citizens of other States as aliens."

If the principle contended for by this legislation were carried to its logical conclusion, it is easy to see that the very system of conflicting and destructive commercial regulations, which the Constitution was intended to end, would be restored.

If Louisiana can under heavy penalties require a sugar refiner to buy raw sugar at an equal price with the highest price prevailing in any other market, then logically it could provide that such sugar refiner could be required to pay a greater price.

Carried to its logical extreme, Louisiana could in that event provide that a sugar refinery should not purchase any sugar except that of Louisiana production, and this would directly end all importations of raw sugar. If Louisiana could do this as to raw sugar, it could do so as to any other staple of commerce which it produced.

If Louisiana can pass such a regulation, then every State could pass a similar law with reference to its staples. It would thus follow that each State could require business enterprises within its limits to manufacture only with raw materials of its own production, and thus either such local business enterprises would be altogether destroyed or foreign or interstate commerce would be sensibly diminished.

Suppose New York should pass a retaliatory law, which should provide that no raw sugar should be purchased in that State except at a price which would be 10 per cent. in excess of the prevailing price in New Orleans? The Sugar Refiner, which, like the complainant, has refineries in both States, would be obliged either to violate the Louisiana or the New York law, and, if all the States made similar attempts with reference to their staples to obtain a higher price, the same commercial anarchy would result as prevailed prior to the adoption of the Constitution.

It was mainly the intolerable mischief of such restrictive regulations that brought about the Constitutional Convention of 1787, and while its members disagreed upon many other powers, upon one question they were at all times unanimous and that was that this system of conflicting commercial regulation must end and that between the States of the Federal Union there should be perpetual freedom of

trade. To accomplish this, they delegated to the Federal Government a permanent and plenary power to prevent any interference with foreign or domestic commerce.

It is not necessary to cite any of the many cases decided by this Court which have sustained this paramount power. It has been held that even in the exercise of the highest of all governmental powers, that of taxation, the State may not, under the guise of a license tax, whether large or small,

> "impose any burdens upon such commerce (interstate commerce) within its limits".
>
> Norfolk & Western R. R. Co. vs. Pennsylvania, 136 U. S., 114.

It has been repeatedly held that a state cannot discriminate against citizens or products of other States.

Railroad v. Husen, 95 U. S., 465;
Minnesota v. Barber, 136 U. S., 313;
Brimmer v. Rebman, 138 U. S., 78;
Voight v. Wright, 141 U. S., 62;
Tiernan v. Rinker, 102 U. S., 123;
Guy v. Baltimore, 100 U. S., 434;
Welton v. Missouri, 91 U. S., 275.
Walling v. Michigan, 116 U. S., 446.

Nor impose a license fee on the privilege or occupation of engaging in interstate commerce.

Robbins v. Shelby Co., 120 U. S., 489;
Corson v. Maryland, 120 U. S., 502;
Leloup v. Mobile, 127 U. S., 640;
Harmon v. Chicago, 147 U. S., 396;
Brennan v. Titusville, 153 U. S., 289;
Moran v. New Orleans, 112 U. S., 69;
Asher v. Texas, 128 U. S., 129;
McCall v. California, 136 U. S., 104;
N. & W. R. Co. v. Pa., 136 U. S., 114;
Crutcher v. Ky., 141 U. S., 47;
Henderson v. Mayor, 92 U. S., 259;
Pickard v. Pullman Co., 117 U. S., 34;
Webber v. Va., 103 U. S., 344;
Stoutenburgh v. Hennick, 129 U. S., 141.

Nor can a State in any way attempt to regulate interstate commerce by imposing burdensome conditions under which it may be conducted, whether by fixing rates;

Wabash R. Co. v. Illinois, 118 U. S., 557;
Covington Bridge Co. v. Ky., 154 U. S., 204.

Or by preventing the introduction of certain articles of commerce.

Bowman v. Chicago Ry. Co., 125 U. S., 465;
Leisy v. Hardin, 135 U. S., 100.

Are all these forms of discriminatory legislation invalid, but may the State accomplish the same end by a still more offensive discrimination, which also offends the great and salutary principle of the Fourteenth Amendment as to the equal protection of the law?

The interference would be direct and substantial, for certainly if the purchaser of such sugars must, by reason of the coercion of the presumption, be guided by the price which he pays in other markets and not by the value of the sugar in Louisiana at the time of purchase, this fear of being subjected to the presumption has a very practical and immediate effect upon his liberty to engage freely in interstate and foreign commerce in sugar. He is restricted necessarily to one of several courses. Either he must arbitrarily pay systematically in Louisiana the highest price being paid by him in any other market of the country,—without regard to the many varying trade conditions due to the workings of familiar economic laws, which we have already detailed,—or he must desist from buying sugars in interstate and foreign commerce.

SIXTH.

THE STATUTE CREATES THE OFFICE OF "STATE INSPECTOR OF SUGAR REFINING" AND DESIGNATES AN EXISTING OFFICER, THE "SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA" AS, EX-OFFICIO, "STATE INSPECTOR OF SUGAR REFINING," AND THEREBY VIOLATES ART. 170 OF THE LOUISIANA CONSTITUTION, WHICH PROHIBITS DUAL OFFICE-HOLDING.

I.

THE ACT CREATES THE NEW AND DISTINCT OFFICE OF "STATE INSPECTOR OF SUGAR REFINING."

It is only necessary to refer to the Act itself for proof that it creates an office. It is so expressed in terms.

The title of the Act is, in part:

> "An Act regulating the business of refining sugar, * * * creating the office of State Inspector of Sugar Refining, and such assistants as may be necessary, and providing that the Supervisor of Public Accounts of Louisiana shall be an ex-officio State Inspector of Sugar Refining and for his salary, duties, and those of his assistants;" * * *

Section 2 of the Act reads as follows:

> "That the office of State Inspector of Sugar Refining is hereby created, and the Supervisor of Public Accounts for the State of Louisiana is hereby made *ex-officio* State Inspector of Sugar Refining."

II.

THE ACT THUS MAKES AN EXISTING OFFICER, VIZ., THE "SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA," A DUAL OFFICE-HOLDER.

Louisiana Act No. 25 of 1910 is entitled, "An Act to create the office of Supervisor of Public Accounts for the State of Louisiana; * * *" The Act provides for the appointment of the officer by the Governor and fixes his duties, compensation, etc.

It is clear, then, that Act No. 10 of 1915, E. S., which creates a distinct office and designates an existing officer (Act No. 25 of 1910) to fill the new office thus created, makes of the existing officer a dual office-holder.

III.

ARTICLE 170 OF THE LOUISIANA CONSTITUTION FORBIDS DUAL OFFICE-HOLDING.

Article 170 of the Constitution of Louisiana provides:

> "No person shall hold or exercise, at the same time, more than one office of trust or profit, except that of Justice of the Peace or Notary Public."

This provision is plain and self-operative in its prohibition. It has been accepted by the Supreme Court of Louisiana as meaning literally what it says. It is patent that, under its terms, dual office-holding is impossible.

The judicial construction of the constitutional prohibition is that the first office is *ipso facto* vacated by qualifying for the second, and this judicial construction has been since embodied in Act No. 13 of 1912.

Thus in *State vs. Newhouse*, 29 La. Annual 824, where one

Lewis, while holding the position of jury Commissioner, under appointment of the Governor, was appointed to, and accepted the office of police commissioner, the Court held that, by accepting and entering upon the duties of the office of police commissioner, Lewis ceased to be a jury commissioner and that the office became absolutely vacant.

To like effect are:

State vs. Arata, 32 La. An., 193.
State vs. Fuselier, 51 La. An., 1317, 1319.
State vs. Scott, 110 La., 369, and
State vs. Bain, 135 La., 776 (66 So. Rep., 196).

It may not, therefore, be controverted that the Constitution not only forbids dual office-holding, but that the inevitable effect of accepting a second office is, *ipso facto*, to vacate the first.

IV.

Act No. 10 violates Article 170 of the Louisiana Constitution and is null and void.

We have assumed that it has been seen and accepted that the two offices—"State Inspector of Sugar Refining" and "Supervisor of Public Accounts for the Sale of Louisiana"—are both offices of "trust or profit," as the Acts creating the respective offices fix in terms the duties and compensation of the officers respectively

It cannot be contended that the office of "State Inspector of Sugar Refining" is any the less an office merely because the Legislature has designated the person who is to administer the office. The fact that the Legislature has designated to fill the office an existing office-holder who is incapable of holding the office, does not in any degree change the fact that a new office has been created, but merely affects the ability of the designated person to hold the newly created office.

If the Act had provided that the Governor should appoint the Inspector of Sugar Refining, and if the Governor had appointed the person who happened to be the Supervisor of Public Accounts, such appointee could indeed have qualified as Inspector, but he would thereby have at once vacated the office of Supervisor; however, under the Act as framed, the Supervisor cannot qualify as Inspector, for the reason that the office of Inspector must be held by the Supervisor, and the moment the Supervisor qualifies as Inspector, he ceases to be Supervisor. Yet it is plain that in both cases the office of Inspector remains the same. So the mere designation by the Legislature of the Supervisor of Public Accounts as the one to fill the office, in no degree affects the quality of the office of Inspector as an office. If it be an office when the Governor appoints the office-holder, as must be admitted, it is an office when the Legislature designates the office-holder.

Nor can this result be avoided by suggesting that Act No. 10 merely imposes additional duties upon an existing officer, for, as we have shown, the Act "creates" the office; and the Act is one purporting to regulate the sugar refining business, making special rules as to the purchase of sugar by refiners, compelling reports by sugar refiners, imposing a special tax upon sugar refiners, etc., and not purporting, either by its title or in its body, to be an amendment of the Supervisor Act. It is sufficient to say, therefore, that Act No. 10 does not purport to be an amendment, but it may be added that the provisions of Act No. 10 are not germane to the Act creating the Supervisor's office and clearly would not have been valid as an amendment thereof.

Nor can it be successfully contended that the designation by the Legislature of an existing officer, *ex-officio*, to hold the newly created office of Inspector of Sugar Refining, renders the new office any the less a distinct office. The Act in terms calls it an office; it "creates" the office as a distinct office; and an office is an office without regard to who fills it, whether

by virtue of holding another office or by original appointment election or selection in any other manner.

The Supreme Court of Louisiana has passed upon this very question. In the case of *Bouanchaud vs. D'Hebert*, 21 An. 139, the Court said:

> "Article 117 of the Constitution declares that 'No person shall hold or exercise, at the same time, more than one office of trust or profit, except that of justice of the peace or notary public.'
>
> "The fourth section of the act, approved September 4, 1868, provides 'That the clerks of the several District Courts shall be *ex-officio* clerks of the Parish Courts, and that the clerk or his regularly appointed and qualified deputy, shall always be in attendance on the Parish Court at all its terms and sittings.' It also prescribes certain duties to the clerks and imposes a fine for failure to perform those duties.
>
> "We think this section clearly creates the office of Parish Clerk, and the words '*ex-officio*' do not make it the less an office of trust. It is a separate office, and the designation of the District Clerk to fill it, is contrary to Article 117 of the Constitution, and is, therefore, null and void."

Finally, it is patent upon the face of the Act that, if there can be no Inspector of Sugar Refining, the Act itself must fall as a whole, for there would then be no way in which the provisions of the Act could be carried out.

If there be no Inspector, there will be no one to whom the reports required by Section 3 can be made; no one to make the inspection of books and records required by Section 4; no one to whom the monthly payments of inspection taxes may be made as required by Section 5; and, finally and conclusively, no one who can formulate and promulgate the regulations provided for and required to be made by Section 6, and without which the entire Act is incomplete and inoperative.

SEVENTH.

THE STATUTE DIRECTS THE INSPECTOR OF SUGAR REFINING TO FORMULATE REGULATIONS, WHICH ARE TO BE GIVEN THE FORCE AND EFFECT OF LAW, AND THEREIN VIOLATES ARTICLE 21 OF THE LOUISIANA CONSTITUTION, WHICH PROVIDES THAT THE LEGISLATIVE POWER SHALL BE VESTED EXCLUSIVELY IN THE GENERAL ASSEMBLY.

I.

THE ACT DIRECTS THE INSPECTOR OF SUGAR REFINING TO MAKE REGULATIONS.

In suport hereof it is enough to consider the literal terms of the Act. Section 6 provides (Record, p. 20):

> "That it is declared to be unlawful for any person engaged in the business of refining sugar to buy sugar on an *ex parte* test of its quality, or upon any other weights than those of the actual net contents of any bag or package; and, in furtherance of this prohibition, the State Inspector of Sugar Refining is empowered and he is hereby directed to formulate, and to promulgate, by publication in three consecutive editions of a newspaper published in the City of New Orleans, such reasonable regulations as he may deem proper, and he may, also, formulate and promulgate, from time to time, in the same way, such other reasonable regulations, affecting any branch of the business of sugar refining, as may be conducive to the public interest, and to the prevention of monopoly in the business of refining sugar, or the protection of the public from the consequences thereof."

It will be observed, in passing, that the Inspector is directed to formulate some regulations at once, and is au-

thorized to make others from time to time. This direction clearly indicates that, in legislative contemplation, the Act is incomplete and inoperative without some regulations, a fact which is conclusively shown by a consideration of other provisions, particularly those of the same Section 6, which forbid a refiner " to buy sugar on an *ex parte* test of its quality, or upon any other weights than those of the actual net contents of any bag or package," and of Section 7, which prescribe drastic penalties if any refiner shall violate the indefinitely prescribed " obligation to operate any refinery as a public utility." This is palpably true, since otherwise the refiner is furnished with no standard of conduct to which to conform so as to escape the multiple and excessive penalties of the Act.

II.

THE MAKING OF REGULATIONS IS A LEGISLATIVE FUNCTION AND ITS DELEGATION TO ADMINISTRATIVE BODIES OR OFFICERS IS EXPRESSLY FORBIDDEN BY ART. 21 OF THE CONSTITUTION OF LOUISIANA.

One to whom is delegated the power and authority to make rules of conduct for others is unquestionably invested with legislative powers ; and this is accentuated in the instant case by the provision of the Act, which inflicts the same penalties for the violation of any one of the regulations of the Inspector as for the violation of any substantive rule of conduct prescribed by the Act itself. Section 10 reads in part :

> " That the violation of any of the provisions of this Act, not otherwise provided for, or of any of the regulations promulgated by the State Inspector of Sugar Refining shall be punished by a fine of not less than fifty dollars and not more than twenty-five hundred dollars. Each day's violation of this Act shall constitute a separate offense."

Article 21 of the Louisiana Constitution reads :

> " The legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives."

The exclusiveness of this power is accentuated by two other Articles of the Constitution, viz. :

> " ART. 16. The powers of the government of the State of Louisiana shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit : Those which are legislative to one, those which are executive to another, and those which are judicial to another."

> " ART. 17. No one of these departments, nor any person or collection of persons holding office in one of them, shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

These Articles 16 and 17 leave no room for doubt that it is the deliberate purpose of the Constitution that those of one department of the government shall not exercise any of the powers of the other two departments, and constrain the strictest construction of Article 21.

Whatever may be the disposition in other States and in federal legislation to recognize to some extent the delegation of essentially legislative duties to administrative bodies, yet the Constitution and jurisprudence of Louisiana forbids such delegation.

It is sufficient to refer to the Louisiana case of *State vs. Snyder*, 131 La., 145. In that case Snyder contested the legality of a provision of a Sanitary Code enacted by the State Board of Health, upon the claim that the enactment of the Sanitary Code by the Board of Health involved a legislative function in violation of the Constitution. While the

Court rejected the defendant's contention, it did so specifically upon the ground that the Constitution itself, by a special Article, authorized the Legislature to delegate the power to the Board of Health; but conceded that, in the absence of this special constitutional authority, the Legislature could not have made the delegation of power. The Court said:

> "He (the defendant) challenges the constitutionality of said provision on the ground that the Legislature could not validly delegate to the State Board of Health the power to declare and provide what conduct shall constitute a crime, that the power by which conduct otherwise innocent is made criminal is legislative, and that legislative power for state purposes can be validly exercised only by the Legislature itself, and cannot be constitutionally delegated to some subordinate functionary.
>
> The contention would be well founded if it were not for article 296 of the Constitution, reading:
>
> > 'The General Assembly shall create for the state, and for each parish and municipality therein, boards of health, and shall define their duties, and prescribe the powers thereof.'"

The Inspector of Sugar Refining is an administrative officer and forms part of the Executive department, hence he may only execute laws made by the legislative department.

The *Snyder case*, 131 La., 145, above cited, directly supports this view. The Court there say in terms that the delegation by the Legislature to the Board of Health of the power to make health regulations and laws would have been in conflict with the general prohibition of the Constitution against declaring the legislative power—as necessarily implied from the above quoted Articles—and was justified only by the authority of the Constitution itself as the Court found it to be expressed in Article 296 with reference to the Board of Health.

Furthermore, Article 33 of the Louisiana Constitution reads :

> " The General Assembly shall never adopt any system or code of laws by general reference to such system or code of laws ; but in all cases shall recite at length the several provisions of the laws it may enact."

If the Legislature itself cannot adopt a system or code of laws with the provisions of which it is familiar, and of which it approves, but must " recite at length the several provisions of the laws it may enact," how much the less can it delegate to another the power to enact laws according to that other's judgment and will—laws of which the Legislature must necessarily be ignorant, and the terms of which neither it nor anyone can possibly predict or forecast.

EIGHTH.

LOUISIANA ACT NO. 10 OF 1915, E. S., PROVIDES FOR THE APPOINTMENT OF AN OPERATING RECEIVER UNDER CERTAIN CONDITIONS, TO THE PROPERTY OF A SUGAR REFINER SUBJECT TO ITS TERMS, WHEN MADE DEFENDANT IN A SUIT UNDER THE ACT, AND THEREIN DEPRIVES SUCH DEFENDANT OF PROPERTY WITHOUT DUE PROCESS AND DENIES THE EQUAL PROTECTION OF THE LAWS, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The Act provides for the appointment of an operating Receiver, *pendente lite* under certain conditions, and the

Receivership so provided for constitutes an unreasonable taking of property and a denial of the equal protection of the laws, and violates the Fourteenth Amendment.

Section 7 of the Act reads :

> " That any person engaged in the business of refining sugar within this State who shall systematically pay in Louisiana a less price for sugar than he pays in any other State shall be *prima facie* presumed to be a party to a monopoly or combination or conspiracy in restraint of trade and commerce, and upon conviction thereof shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so. Any person convicted of violating the provisions of this section shall have his license to do business in Louisiana revoked and canceled ; and any domestic corporation shall be liquidated, and any foreign corporation shall be ousted from the State, and its property sold. If the refining business of any person, firm or corporation, is conducted in violation of this provision of this Act, or in violation of the obligation to operate any refinery as a public utility, the Court may if irreparable injury to the public interest is shown, *appoint a receiver over such business* at any stage of the proceedings, and the receiver may after he has been sworn and has given bond in such amount as the Court shall have fixed *be authorized to carry on the business*, if the public interest requires it, until the termination of the suit." (Italics ours.)

Section 9 reads in part :

> " That any person, firm or corporation owning or operating a refinery who is charged with violating this law, and shall be made defendant in a suit by the State for forfeiture of charter, or for cancellation of license to do business in the State, and for ouster therefrom, may, upon showing by the State that the conspiracy, monopoly, or acts charged are detrimental to the general public welfare, be ruled into court, at any stage of the proceedings, *to show cause why* an

injunction should not issue, or *a receiver be ordered to take charge of the defendant's business, with power to operate* after having been sworn and given bond as fixed by the Court." (Italics ours.)

The turning over of the property and assets of a defendant refiner to a Receiver is obviously a taking of property. The possession of the property is changed, and the possession of property is property ; possession and right of use are among the most valuable and beneficial elements of ownership.

But here the owner is not merely dispossessed of his refinery, stock, money, etc., he is also subjected to the perhaps ruinous operation of his business by another at his expense and forced to accept the will, judgment and capacity of another in the conduct of a most complex commercial and manufacturing business, in which experience and judgment are all essential as to buying, selling, manufacturing, prices to be paid and asked, credits and the numberless other details which spell the difference between loss and profit.

Is such a taking of property unreasonable?

Let us first examine the provisions of the Act to find what is designed to be ultimately accomplished by a suit based on its violation, in which alone a Receiver *pendente lite* may be appointed. The very terms of the Sections quoted show that the ultimate purpose of such a suit as may be brought is to accomplish the total cessation of the defendant's business. It is patent, therefore, that the Act admits that the State, the only possible plaintiff in such a suit, has no interest in the continued operation of the defendant's business.

But, even assuming for the sake of the argument, that the Act be held to assert that the State has an interest in the continued operation of a defendant's business after judgment of dissolution or ouster, on what theory could such asserted interest be justified? Plainly only on the ground of public interest.

We have, we trust, shown that the business of sugar refining is not affected with a public interest and that sugar refineries are not public utilities, since the business is not affected with a public interest; and hence that the business is purely private and that the State has no interest therein. How then can a Receivership over a private business be justified at the instance of the State in the public interest? It is elementary that a Receivership can be granted over a private business only at the instance of some one having a property interest—stockholders or creditors.

Even if it were to be conceded for the argument that the business of sugar refining is affected with a public interest, yet there would be no justification for the State to compel the operation of such business. For, in any event, the public control may lawfully be imposed only to the extent of the interest which the owner has created; yet a receivership under the Act would wholly displace the owner and cover the entire business, which it is not conceivable the public interest could require.

Furthermore, there is no obligation upon an owner to continue the operation of a business affected with a public interest. As long as he conducts such business, he must submit to a reasonable public control, under the limitations just above stated, but he may withdraw at pleasure. As said by Chief Justice WAITE in the *Munn case*, 94 U. S., 126:

> "When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. *He may withdraw his grant by discontinuing the use;* but, so long as he maintains the use, he must submit to the control." (Italics ours.)

Even if it were conceded, *arguendo*, that sugar refineries are not merely affected with a public interest, but are public utili-

ties, the same rule applies: The public control extends only to the matters affecting the obligations to the public of the public utility. For instance, railroads must submit to reasonable public control with regard to rates, train service, contracts for carriage, etc,—in short, with reference to all their obligations to the public—but they may not be so controlled with reference to those matters which are as private with them as they are with wholly private enterprises. Instances could be multiplied—gas, electric light, telephone, telegraph, etc.

This Court only recently said:

> "A railroad company's possessions are subject to its public duty, but beyond this and within charter limits, like other owners of private property, it may control its own affairs." *Great Northern Ry. Co. vs. Minnesota Railroad Commission*, 238 U. S., 340.

It follows, therefore, that, even if there be a public interest warranting interference, a receivership is not a reasonable or appropriate remedy, because it necessarily divests many of the rights of the owner which are in no way illegally exercised and which the public has no interest whatever in controlling or divesting. To allow such a receivership would be to force the owner to operate against his will and judgment, and thus appropriate to the public use property and rights which he has the undoubted right to put to any lawful use he will.

It is plain that, if violation or violations of the law be charged against a sugar refiner, the continuance of the illegal acts or conduct may be fully and completely suspended, *pendente lite*, by an injunction. To grant a Receivership for such a cause would be as if the law should provide that a department store violating a law regarding, say, the employment of minors, should be thrown into the hands of a receiver pending the trial of the suit.

Section 9 makes it plain that it is solely the prevention of

the doing of one or more of the prohibited things which constitute the public interest, and upon which the Receivership is based. It is patent that, the violation of the law ceasing, the public interest (if one existed) must, *ipso facto*, cease; yet the prevention of the continuance of the violation of the law in one or more particulars may be fully accomplished by an injunction. For the State to deny the effectiveness of an injunction in such case would be to deny the ability of its courts to enforce the injunction, which would be to deny its own sovereignty.

The business of sugar refining is a lawful business and the owner of such a business has a constitutional right to lawfully conduct such business. A receivership, which would deny him this right, upon the excuse of stopping him from the violation of some obligation which he owes to the public, would clearly work an unreasonable taking of property.

And when it is considered that the business is in fact private, and that the owner may operate or not as he will, there can be no shadow of plausible defense for such an unusual and unnecessary invasion of the owner's dominion over his property.

Conclusion.

We submit that Louisiana Act No. 10 of 1915, E. S., violates the Constitutions of the United States and of the State of Louisiana upon all the grounds of the Bill urged herein and is therefore null and void; and that complainant was entitled to the temporary injunction, *pendente lite*, granted by the decree of the District Court against the defendants, enjoining and restraining them, and each of them, from enforcing, or attempting to enforce, against complainant the provisions of said Act

and any and all regulations made, or which shall be made, thereunder; and that the decree appealed from should be affirmed.

Respectfully submitted,

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HUGH C. CAGE,
FRANK L. CRAWFORD,
Of Counsel for Complainant, Appellee.

April, 1916.

McFARLAND, SUPERVISOR OF PUBLIC ACCOUNTS OF LOUISIANA, *v.* AMERICAN SUGAR REFINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 847. Argued April 11, 12, 1916.—Decided April 24, 1916.

Act No. 10 of the Extra Session of the General Assembly of Louisiana for 1915, relating to the business of refining sugar and creating the rebuttable presumption that any person systematically paying in that State a less price for sugar than he pays in any other State is a party to a monopoly or conspiracy in restraint of trade, *held* unconstitutional under the equal protection and due process provisions of the Fourteenth Amendment; the classification therein, if not confined to a single party, being so arbitrary as to be beyond possible justice, and the presumptions created having no foundation except on intent to destroy.

While the legislature may go far in raising presumptions and changing the burden of proof, there must be rational connection between the fact proved and the ultimate fact presumed.

It is not within the province of the legislature to declare an individual guilty, or presumptively guilty, of a crime.

A statute must fall as a whole, if it falls in sections without which there is no reason to suppose it would have been passed.

229 Fed. Rep. 284, affirmed.

THE facts, which involve the constitutionality under the commerce clause of, and the Fourteenth Amendment to, the Federal Constitution of Act No. 10 of Louisiana of 1915, relative to, and regulating the business of, refining sugar, are stated in the opinion.

Mr. Donelson Caffery and *Mr. Harry Gamble*, with whom *Mr. Ruffin G. Pleasant*, Attorney General of the State of Louisiana, and *Mr. Daniel Wendling* were on the brief, for appellants.

Mr. James M. Beck, with whom *Mr. Joseph W. Carroll*, *Mr. George Denegre*, *Mr. Hugh C. Cage* and *Mr. Frank L. Crawford* were on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by a New Jersey corporation, the appellee, against the Inspector of Sugar Refining, the Governor and the Attorney General of Louisiana, to prevent the enforcement of Act No. 10 of the Extra Session of the General Assembly of that State for 1915. The grounds of relief are the commerce clause and the Fourteenth Amendment of the Constitution of the United States.

The plaintiff was granted a preliminary injunction by three judges in the District Court and the defendants appealed. 229 Fed. Rep. 284.

A summary of the statute is as follows: The business of refining sugar is declared to be impressed with a public interest 'by reason of the nature and by reason of the monopolization thereof,' and on that footing the regulations are made. After providing for elaborate reports and inspection of books by the Inspector the act imposes for the benefit of the Inspection Fund a tax of one-half cent for every three hundred and fifty pounds of granu-

lated sugar made. It then makes it unlawful to buy sugar on an *ex parte* test of quality, &c., and proceeds to authorize the Inspector to make such reasonable regulations not only concerning that, but affecting any branch of the business of sugar refining, as he may deem proper and as may be conducive to the public interest, and to the prevention of monopoly in the business or to the protection of the public from its consequences. Then come the provisions chiefly in issue here. By § 7 "any person engaged in the business of refining sugar within this State who shall systematically pay in Louisiana a less price for sugar than he pays in any other State shall be *prima facie* presumed to be a party to a monopoly or combination or conspiracy in restraint of trade and commerce, and upon conviction thereof shall be subject to a fine of five hundred dollars a day for the period during which he is adjudged to have done so"; his license to do business in the State is to be revoked, and any foreign corporation (such as the plaintiff is) is to be ousted from the State and its property sold. If irreparable injury to the public interest is shown in such a case the court may appoint a receiver at any stage of the proceedings, &c. By § 8 if shown by affidavit or otherwise either *in limine* or after trial that any refinery has been closed or kept idle for more than one year it shall be presumed to have been done for the purpose of violating this act or the laws against monopoly, &c., and if the counter evidence does not rebut the presumption the court shall order the owner to sell the refinery within six months and if that is not done shall appoint a receiver to do it within twelve months. In computing the year of idleness any plant shall be treated as idle that has not been operating *bona fide*. By § 9 in suits for ouster, &c., upon showing by the State that the monopoly, &c. are detrimental to the public welfare, an injunction may be issued or a receiver appointed, after a hearing, subject to an appeal return-

able within five days to be determined within forty days, &c. By § 10 a fine of from fifty to twenty-five hundred dollars a day is imposed for violations of the act not otherwise provided for or of any of the regulations promulgated by the Inspector. By § 11, in suits under the act, books, letters and other documents, 'or apparent copies thereof,' of the defendant shall be given effect as being what they purport to be and 'as establishing the facts carried on their face' unless sufficiently rebutted, upon proof of their having been in the possession or control of the defendant; and any report of any legislative committee of the State, or of the Senate or House of Representatives of the United States, or of any bureau, department, or commission acting under the authority either of the State or of the Senate or the House of Representatives of the United States, and the records of any court of any State, or of the United States are made *prima facie* evidence of the facts set forth therein, subject to rebuttal. In conclusion, by § 15 the business of refining sugar is defined to be "that of any concern that buys and refines raw or other sugar exclusively, or that refines raw or other sugar from sugar taken on toll, or that buys or refines more raw or other sugar than the aggregate of the sugar produced by it from cane grown and purchased by it."

Besides the allegations that bring the plaintiff within the purview of the act, the claims of the protection of the Constitution, and the invocation of the principle of *Ex parte Young*, 209 U. S. 123, for equitable relief, the bill sets forth some facts that throw special light upon the case. First for the bearing of § 8, it shows that formerly the plaintiff purchased a consolidated refinery called the Louisiana Refinery, increased its capacity to 2,500,000 pounds daily and worked it until 1909. It then built at a cost of about six million dollars a new refinery at Chalmette with a daily melting capacity of 3,000,000 pounds since increased to 3,500,000. It then closed the Louisiana

Refinery as it could not distribute from New Orleans more refined sugar than could be made at Chalmette. The machinery of the Louisiana Refinery is comparatively antiquated and could not be operated economically, although in case of the destruction of the Chalmette plant it could be used as a substitute at considerable expense and after some delay.

As to the presumption created from the systematic paying in Louisiana a less price for sugar than is paid in any other State, the bill alleges that the plaintiff purchases on an average less than one-half of the Louisiana sugar crop, of which half over a third is shipped as bought, to the plaintiff's northern refineries, so that not much over thirty per cent. is melted at Chalmette. In fact only a comparatively small portion of the plaintiff's meltings in Louisiana is of sugar produced in Louisiana, the remainder having been imported. The chief port for the receipt of raw sugar imported is New York, at or near which there are seven large refineries now in operation.—The Louisiana sugar customarily has been brought on the market in November and December, during which months it is pressed for sale in amounts far in excess of the requirements of all the refineries in the State. Purchasers therefore had either to ship a part north or to store it with consequent loss from deterioration and in weight, interest, and cost of storage and insurance, and at the risk of a decline in the market. These elements necessarily affect the price, which cannot be higher than that in the ultimate market less the cost of transportation, and which has been approximately that. Furthermore the period of storage is a time when the market for raw sugar generally declines and the price of refined sugar follows that of raw to the refiner's loss.

Formerly a large part of the sugar manufactured in Louisiana by the plaintiff was sold in the middle west and in Minnesota, Iowa, the Dakotas, &c., and it was to meet

that market that the Chalmette refinery was built. But the great and rapid increase in the production of beet sugar, which now forms one-sixth of all the sugar consumed in the United States and is sold at prices below those of cane sugar, has driven the plaintiff out of those markets to a great extent. The result frequently has been that the plaintiff has derived little or no advantage from the purchase of Louisiana sugar even when bought at a less price than that in New York on the same day.

The bill also shows fully that the plaintiff melts solely on its own account so that its only contact with the public is as a buyer of raw and a seller of refined sugar and its business is affected with a public interest not otherwise than as any other business is, according to its importance and size. It also shows that much the greater part of its Chalmette commerce both in purchase and sale is foreign or among the States. There are other allegations besides those that we have summed up but enough has been stated to disclose the plaintiff's case.

The answer alleges that the plaintiff is a monopoly and combination in restraint of trade in buying, refining and selling sugar throughout the United States and completely controls the sugar trade in Louisiana and sets forth a long series of letters thought to show efforts to obtain and keep such control. It obliquely intimates that the plaintiff can fix prices on occasion even in the New York market, admitted to be the ruling one in the United States. It alleges that suits have been brought against the plaintiff by sugar planters, under the Sherman Act, for a total of near $200,000,000, and that after the exposure of the plaintiff's criminality in a suit by the United States that seems to have come to nothing, this law was passed. All of the foregoing, the main portion of the answer, is offered as ground for denying to the plaintiff any equitable relief.

In the alternative, if the plaintiff has a standing in

equity, the answer denies the plaintiff's explanation of the idleness of the Louisiana Refinery and avers that the statement that it buys less than half the Louisiana crop is deceptive, and that it buys seventy per cent. of the raw sugar sold to refiners. It alleges that the shipping of raw sugar north is due to artificial conditions created by the plaintiff and that but for them the whole would be 'handled locally.' It also alleges that the difference between the Louisiana and the New York price has been made less by the plaintiff since 1911, in order to prevent a repetition of the one successful combination made by the planters. Finally it alleges that the shipments to New York arrive when there is no sugar on hand or when the first sugar from Cuba is coming in, and enable the plaintiff to influence downward the price of the Cuban sugar that it needs. Most of the allegations of the bill are denied, and it is said that the rush to sell in November and December would have found a market but for the plaintiff's wrongful deeds.

The answer is signed by the Attorney General of the State; and if he were authorized to interpret the meaning of the other voice of the State heard in Act No. 10, would seem to import that the latter was a bill of pains and penalties disguised in general words. For the first division of the answer shows that the plaintiff is the only one to whom the act could apply and that the statute was passed in view of the plaintiff's conduct, to meet it. It is upon the assumption of the latter fact that the argument is pressed that the plaintiff has no standing in equity since it made the legislation necessary. If the connection were admitted it would be so much the worse for the constitutionality of the act. We deem it enough to say that neither that supposed connection nor the general intimations of the plaintiff's wickedness in the answer deprive it of its constitutional rights or prevent it from asserting them in the only practicable and adequate way.

The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained. We deem it sufficient to refer to those that were mentioned by the District Court; a classification which, if it does not confine itself to the American Sugar Refinery, at least is arbitrary beyond possible justice,—and a creation of presumptions and special powers against it that can have no foundation except the intent to destroy. As to the classification, if a powerful rival of the plaintiff should do no refining within the State it might systematically pay a less price for sugar in Louisiana than it paid elsewhere with none of the consequences attached to doing so in the plaintiff's case. So of anyone who purchases but does not refine. So of any concern that does not buy and refine more sugar 'than the aggregate of the sugar produced by it from cane grown and purchased by it' as easily might happen with a combination of planters such as the answer gives us to understand has been attempted heretofore.

As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is "essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate." *Mobile, Jackson & Kansas City R. R.* v. *Turnipseed*, 219 U. S. 35, 43. The presumption created here has no relation in experience to general facts. It has no foundation except with tacit reference to the plaintiff. But it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime. If the statute had said what it was argued that it means, that the plaintiff's business was affected with a public interest by reason of the plaintiff's monopolizing it and that therefore the plaintiff should be *prima facie* presumed guilty upon proof

that it was carrying on business as it does, we suppose that no one would contend that the plaintiff was given the equal protection of the laws. We agree with the court below that the act must fall as a whole, as it falls in the sections without which there is no reason to suppose that it would have been passed.

Decree affirmed.